

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION
CIVIL ACTION NO. C-84-617-D

LIGGETT GROUP, INC.,
Plaintiff,

vs.

BROWN & WILLIAMSON TOBACCO
CORPORATION,
Defendant.

C O N F I D E N T I A L

BROWN & WILLIAMSON TOBACCO
CORPORATION,
Plaintiff,

vs.

LIGGETT GROUP, INC., and
GENERIC PRODUCTS CORPORATION,
Counterclaim-
Defendants.

D E P O S I T I O N
OF
GERALD COUNTRYMAN

At Charlotte, North Carolina

May 29, 1986

REPORTER: Barbara B. Miller, CVR
Notary Public



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Reporting
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B24 18616

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Mr. Countryman

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Mr. Countryman by Ms. Bagley

This is the Deposition of GERALD COUNTRYMAN taken in accordance with the North Carolina Rules of Civil Procedure in connection with the above case.

Pursuant to Notice, this Deposition is being taken in the offices of COURT REPORTING SERVICES, 1125 East Morehead Street, Suite 206, Charlotte, North Carolina, beginning at 2:00 p.m. on May 29, 1986, before BARBARA B. MILLER, Notary Public.

* * * * *

GERALD COUNTRYMAN, upon first being duly sworn, testified as follows:

EXAMINATION BY MS. BAGLEY

Q. State your name for the record, please?

A. Gerald D. Countryman.

Q. And what is your address?

REDACTED

Q. Is that your home address?

A. Yes, ma'am.

Q. Do you work for Brown & Williamson Tobacco Company?

A. Yes, I do.

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Redacted information not available for public review
because of individual privacy concerns.

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Mr. Countryman/By Ms. Bagley

Q. And what's your position there?

A. Department sales.

Q. Is that for a particular department?

A. Yes, ma'am.

Q. Which one?

A. The Charlotte Department.

Q. What geographical area does that encompass?

A. Basically, North and South Carolina. There are certain counties within each of those states that are managed by other departments. And I can't name the counties, but there are basically six counties in each state that I'm not responsible for.

Q. And you don't know which ones those are?

A. Not offhand.

Q. Okay.

A. I could if I had a map, but I don't know them by memory.

Q. How long have you been the department sales manager?

A. Since October of 1979.

Q. What was your job before that?

A. I was a sales assistant to the area manager for the West Coast in Louisville, Kentucky.

Q. Who was the area manager for the West Coast?

A. Don Christensen.

Q. How long were you in that position?

A. From February, 1979, until October, 1979.

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Mr. Countryman, by Ms. Bagley

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Q. Can you just briefly state what your responsibilities were in that position?

A. There were a lot of them. Basically, to assist Don Christensen in any of his job responsibilities.

Q. Did you have any written accountabilities in this job?

A. Not to my knowledge.

Q. Well, then, what were Mr. Christensen's responsibilities?

A. To supervise the sales organization in a geographic area on the West Coast.

Q. What was your position before that one?

A. I was a division sales manager in Sacramento, California.

Q. When did you start there?

A. April, 1977.

Q. And just briefly what were your responsibilities in that job?

A. To manage a sales force of six sales reps and to manage, obviously, the company's business in that geographic area.

Q. And before that, what was your position?

A. I was a division sales manager in Great Falls, Montana.

Q. How long were you in that position?

A. From September, 1973, until April, 1977.

Q. Did you have a position before that?

A. Yes, ma'am.

Q. What was that?

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CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

Mr. Countryman/By Ms. Bagley

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A. I was a sales rep in Spokane, Washington.

Q. What were your responsibilities as a sales rep?

A. Call on retail outlets and promote the company's products in those retail outlets.

Q. Any job before sales rep?

A. Not with Brown & Williamson.

Q. Where were you before that, before you were with Brown & Williamson?

A. With the Skaggs Drug Centers.

Q. Where was that?

A. Spokane, Washington.

Q. And what was your position there?

A. Clerk.

Q. How long was that for?

A. I really don't remember.

Q. Okay, did you have a job before that?

A. No.

Q. Let's go back up to the present then, could you tell me what your responsibilities as department sales manager are?

A. To manage the personnel, sales personnel, in the two-state area. It consists of 57 sales reps, 5 key accounts managers, 6 division managers, and an office secretary.

Q. Who do you report to in your position as department sales manager?

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Mr. Countryman/by Ms. Bagley

A. Frank Schoenheiter.

Q. And what's his title?

A. He's area director, southeast.

Q. Have you reported to Mr. Schoenheiter the entire time that you've been the department sales manager?

A. No, ma'am.

Q. Who did you report to before you reported to Mr. Schoenheiter?

A. His name was Jerry -- W. G. Lampert.

Q. All right, what was his title?

A. Area director, southeast.

Q. What time period was this?

A. From October, 1979, until his retirement and I don't remember the day that he retired.

Q. All right, but Mr. Schoenheiter succeeded him in that job?

A. Yes, he did.

Q. In your position as department sales manager, do you prepare regular reports?

MR. JAMES: Can you specify that. Can you break that down a little bit more?

Q. Into what?

MR. JAMES: What kind of reports are we talking about?

Q. Regular reports reporting your activities?

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Mr. Countryman by Ms. Bagley

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MR. JAMES: What kind of activities are
we talking about?

Q. You don't understand the question?

A. I really don't, I have an idea. There are a lot of
reports that I work with --

Q. Do you prepare regular reports that you send to
Mr. Schoenheiter?

A. Yes, I do.

Q. Is this more than one sort of report?

MR. JAMES: Object to the form.

A. There's only one report that I'm required to send him
on a monthly basis, the senior manager's monthly report.

Q. What sort of information is that supposed to include?

MR. JAMES: What do you mean by

"supposed to"?

Q. Do you understand the question?

A. The report is a narrative report and I can place
anything in that report that I deem appropriate during
that month.

Q. And you prepare these every month?

A. Yes, ma'am.

Q. How long do you maintain these reports in your files?

A. I keep them in my personal files one year, and retain
them, I believe, five years.

Q. Where do they go after the one year?

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CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

Mr. Countryman/By Ms. Bagley

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A. My reports are maintained at my home in manila envelopes.

Q. So you keep them in your office for a year and then you take them home for another four years?

A. (Witness nods head affirmatively.)

Q. Did you produce any documents in this lawsuit?

A. Yes, I did.

Q. Did you produce all the monthly reports that you had in your files?

A. I honestly don't remember.

Q. What were you told about producing your documents?

A. My memory says that --

MR. JAMES: Other than your discussions with your attorneys.

A. Yeah, I think the information that I was required, or requested, to provide was information that dealt specifically with generic cigarettes.

Q. So you went through your files and selected out the documents that you thought fell into that category?

A. Yes, I did.

Q. And just produced those?

A. (Witness nods head affirmatively.)

Q. The reason I'm asking these questions is that I've only been able to find four or five of his monthly reports in the documents that were produced. Do you know whether or not his monthly reports were produced?

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Mr. Countryman/by Ms. Bagley

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MR. JAMES: I don't know. I'll make inquiries if you like.

Q. I would appreciate that because I would think that they would be called for.

MR. JAMES: Well, if they dealt with generic cigarettes, I assume.

Q. Right.

MR. JAMES: If they didn't, they wouldn't.

Q. Well, we don't have to argue that here, but if you could check that, I would appreciate it.

MR. JAMES: Could I ask you to send a follow-up letter since I'm not regularly assigned to this case.

Q. Okay, actually we'll probably find a couple of new topics for that letter as we go along also.

(WHEREUPON, there was held a discussion off the record which was not reported.)

Q. You stated that you managed sales personnel including sales reps, key account managers and division managers. I want to find out what the responsibilities of those people are, can we start with the key account managers? First of all, you told me there was five that report to you?

A. That's correct.

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Mr. Countryman/By Ms. Bagley

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Q. Who are those?

A. Those five -- do you want the names?

Q. Yes, please?

A. J. V. Booth, Kathy Parker, Melissa Webb, Adam Smith, and Brian Faulkner.

Q. Is each of these people responsible for a geographic area or how are their responsibilities divided?

A. Generally, they're assigned specific accounts which coincide with a geographic area, but not necessarily.

Q. Could you describe for me what the responsibilities of a key account manager are?

A. A key account manager is responsible for calling on assigned accounts to introduce and promote the sale of Brown & Williamson products.

Q. Now, you've said that there were six division managers in your area?

A. That's correct.

Q. What are their names?

A. Rance Lumston, J. Darryle Hopkins, Michele Goldberg, James F. Strickland, W. Preston Lollis, and Rex Walker.

Q. Does each of these people have a geographic area for which they're responsible?

A. Yes, they do.

Q. Starting with Mr. Lumston, tell me which area they're responsible for?

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Mr. Countryman by Ms. Bagley

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2 A. I can tell you the headquarter cities that they're
3 responsible for.

4 Q. That would be fine.

5 A. Lumston is Charlotte, North Carolina. Hopkins is
6 Raleigh, North Carolina. Goldberg is Winston-Salem.
7 Strickland is Charleston, South Carolina. Lollis is
8 Fayetteville, North Carolina. And Walker is Asheville,
9 North Carolina.

10 Q. What are the responsibilities of the division manager?

11 A. To manage the sales reps assigned to that division, and
12 to sell and promote Brown & Williamson tobacco products
13 in the area for which they're responsible.

14 Q. Do the key account managers give you regular written
15 reports of their activities?

16 A. Yes, they do.

17 Q. What are those reports called?

18 A. Each key account manager provides a senior manager's
19 monthly report.

20 Q. That goes to you?

21 A. Yes, ma'am.

22 Q. Anywhere else?

23 A. Yes, ma'am.

24 Q. Where else?

25 A. Vice president of sales and Frank Schoenheiter, the area
director.

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Mr. Countryman by Ms. Bagley

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Q. Who is the vice president of sales?

A. Lanny Butler.

Q. Does your senior manager's monthly report also go to Mr. Butler?

A. Yes, ma'am.

Q. Mr. Butler and Mr. Schoenheiter, nobody else?

A. No, not to my knowledge.

Q. And do you keep a file of your key account managers' senior manager's monthly reports?

A. Yes, I do.

Q. And for how long do you maintain those files?

A. Generally, five years.

Q. Do you know whether you produced any of those files in this lawsuit?

A. I really don't remember.

Q. I would appreciate it if you would also check on that, because we haven't been able to find any key account manager reports that I know of.

MR. JAMES: Subject to the same discussion we had before.

Q. Great. Do your division managers give you a regular written report of their activities?

A. Yes, ma'am.

Q. And what is that report called?

A. The weekly activity report.

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Mr. Countryman by Ms. Bagley

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Q. And that goes to you?

A. Yes.

Q. And anybody else?

A. No, ma'am.

Q. How long do you maintain those files?

A. Five years.

Q. Do you remember whether or not you produced any of those reports?

A. No, I don't remember.

Q. Back to the key account managers for a minute, besides the monthly reports that they give you, is there another regular written report that they give you?

A. No, ma'am.

Q. They don't have to file a weekly activity report?

A. Let me qualify that -- you said a written report --

Q. Right.

A. They also recently began providing me with a weekly activity report as well.

Q. Which is written?

A. Yeah, it's not a narrative report. It just lists the customers on which they called that week.

Q. So it's not the same form that the division manager's weekly report is on?

A. Yes, it is.

Q. It is the same form. And when did that begin for the

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Mr. Countryman/by Ms. Bagley

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key account managers?

A. I can't give you a specific date, but I'm trying to remember and say that it's less than a year.

Q. You have 57 sales reps that report to you indirectly?

A. Correct.

Q. Just briefly, what are their job responsibilities?

A. To call on retail accounts and to introduce and promote Brown & Williamson tobacco products in those accounts.

Q. Besides the report files that you've testified to today, do you maintain customer files?

A. Uh-huh, yes, ma'am.

Q. What format are those files in?

MR. JAMES: Object to the form.

A. I can tell you it's very obvious. They're MKP2 customer sales and analysis reports.

Q. Is that all?

A. That's all.

Q. Do you recall collecting information on generic cigarettes in January, 1984?

MR. JAMES: Collecting from whom -- from anybody?

Q. From anybody -- collecting information?

MR. JAMES: Answer if you can.

A. What were the dates again?

Q. In January, 1984 -- very early in 1984?

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Mr. Countryman by Ms. Bagley

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A. No, I don't remember collecting them.

Q. I'd like to show you a document that's previously been marked as Schoenheiter Exhibit 2, and ask you to look at that, please. Have you seen this document before?

A. I don't remember seeing it before.

Q. Do you recall discussing a generic survey with Mr. Schoenheiter around January, the beginning of January, 1984?

A. I don't remember discussing it with him. That's not to say I didn't, but I don't remember.

Q. Do you remember filling out a generic questionnaire in this time period?

MR. JAMES: Can you specify what you mean by "generic questionnaire"?

Q. I'm referring to the second page of this document.

MR. JAMES: Okay, just so it's clear.

A. I don't remember filling it out. It's very likely, if it was filled out, it was probably done by my secretary.

Q. Do you recall having any discussions with anyone at the head office in Louisville during early 1984 about generic cigarettes?

MR. JAMES: Solely about generic cigarettes?

Q. A discussion in which the topic of generic cigarettes was raised.

MR. JAMES: I'm sorry, what was the time

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Mr. Countryman/by Ms. Bagley

period on this?

Q. Early 1984.

MR. JAMES: Meaning January, or
thereabouts?

A. I'd like to have you re-state the question because I'm
not sure with whom in Louisville you might be referring?

Q. Do you remember a conversation with anybody in Louisville
-- Mr. Schoenheiter, Mr. --

A. No specific conversations.

Q. Do you remember any conversation with Mr. Christensen?

A. No, ma'am.

Q. How about Mr. Butler?

A. I don't remember any conversations with him.

Q. How about Mr. Kerr?

A. No, ma'am.

Q. I'd like to ask the Court Reporter to mark as
Countryman Exhibit Number 1 a document that bears the
production numbers 77699 through 77734. (DOCUMENT SO
MARKED.)

(WHEREUPON, there was held a discussion
off the record which was not reported.)

Q. Have you seen this document before?

A. I guess I have, I wrote it.

Q. That was going to be my next question, you did write
this document?

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Mr. Countryman/By Ms. Bagley

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A. Yes, ma'am.

Q. Did you write this document in the regular course of your business?

A. Yes.

Q. At the time that you prepared this document, did you believe it to be accurate?

MR. JAMES: If you remember.

A. My memory says that it was accurate, yes, ma'am.

Q. Directing your attention to the page three of the document, there's an organizational chart for your department?

A. Yes, ma'am.

Q. In October of 1983, did only one key account manager report to you?

A. Yes, ma'am.

Q. When did the other four start their jobs?

A. I believe it was November, 1985.

Q. All four?

A. Yes, ma'am.

Q. Was there any reason for the increase in key account managers in your department?

MR. JAMES: If you know.

Q. All my questions are if you know.

A. Can you re-state the question, please?

MR. JAMES: I'll object to the form

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Mr. Countryman by Ms. Bagley

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of that, also.

Q. Why were the four new positions of key account manager created in your department?

MR. JAMES: Object to the form.

A. I'd like to make a correction, too. The date that I gave you was incorrect.

Q. Which date -- oh, the November, '85.

A. I believe it was November of '84 because they've been in the place about 18 months.

Q. Can you read back my previous question, can you do that?

(WHEREUPON, the question appearing on page 19, lines 2 and 3, was read back by the Reporter.)

A. Are we at a point where I should begin to answer the question, or are you guys --

MR. JAMES: No, you may answer it if you can.

A. To the best of my knowledge, the reason that the key account manager complement was expanded was to give us improved coverage of those customers that we felt were key in value to the success of the organization.

Q. Had the number of those customers increased?

A. No.

Q. Did the increase in the number of the key account managers have anything to do with B&W's entry into generic?

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Mr. Countryman By Ms. Bayler

cigarettes?

MR. JAMES: Object to the form.

Q. You can answer.

A. No, I certainly don't believe that it did.

Q. When did you first hear that B&W had decided to begin manufacturing generics?

A. I think my first indication was May of 1984.

Q. And who did you hear that from?

A. I was requested to attend a meeting in Louisville.

Q. And who else was at this meeting?

A. I believe all of the department managers from the United States.

Q. Anybody else?

A. Not that I can recall.

Q. Did anybody give a presentation at this meeting?

A. Yes.

Q. Who was that?

A. I believe Lanny Butler, Dick Blott, Don Christensen. That's it, that I can remember.

Q. So Mr. Butler, Mr. Blott, Mr. Christensen, and the department managers were the only people at this meeting?

MR. JAMES: Objection.

A. To the best of my knowledge.

Q. Were any written materials distributed at this meeting?

A. Yes.

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Mr. Countryman/by Ms. Bagley

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Q. What were those materials?

A. Could you be a little more concise in asking the question?

Q. What was distributed at the meeting?

A. Material that explained our entry into the generic cigarette market.

Q. Did anybody at this meeting discuss the reason that B&W had decided to enter the generic segment?

MR. JAMES: Object to the form.

A. Yes.

Q. Who discussed that?

A. I believe it was Lanny Butler, but I don't remember for sure.

Q. What did he say?

A. I don't remember his exact words, but his -- to paraphrase him -- he indicated that we were entering the market because of a decline in our business as a result of the increase in generic cigarette sales.

Q. What else was discussed at this meeting?

MR. JAMES: Can you be more specific?

Q. Just anything else that he remembers that was brought up at the meeting?

MR. JAMES: I'll object to the form.

A. And I don't remember anything other than a discussion of the generic issue at that meeting.

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Mr. Countryman by Ms. Bagley

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Q. Was the generic rebate structure discussed at that meeting?

A. I don't remember, but I believe that it was, yes.

Q. Do you remember what you were told about the generic rebate structure at that meeting?

A. To the best of my knowledge, the meeting exposed us to the introduction of Brown & Williamson into the generic market business, and it introduced us to the products and the generic rebates that we were going to use as we began our sales presentations in the marketplace. But beyond that, I can't remember anything that that material dealt with.

Q. Did anyone at this meeting say that Brown & Williamson was going to concentrate on the largest generic accounts?

MR. JAMES: Object to the form.

A. No, not to my knowledge.

Q. Were there any sample packages of Brown & Williamson generics at this meeting?

A. I really don't remember.

Q. Do you remember when the first time was you did see a sample pack?

A. I would say that it was probably sometime in June of 1984.

Q. Where did you see it?

A. I believe that we were shipped some generic selling

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Mr. Countryman by Ms. Bagley

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1 samples to my department office. But, again, I don't
2 remember.

3 Q. Do you recall what these packages looked like?

4 A. I can remember what the packs look like that we used as
5 selling samples to enter the marketplace, yes.

6 Q. And what did they look like?

7 A. They were white and black, and blue and white, and red
8 and white, and green and white.

9 Q. Did they have a leaf on the package?

10 A. I believe one of the package designs did.

11 Q. Do you recall the closure seal on the package?

12 A. Yes.

13 Q. What did it look like?

14 A. It was black and gold?

15 Q. Was there an oval on the closure seal?

16 A. I believe on the initial packs there were, yes.

17 Q. And these were the packs that you used as selling
18 samples?

19 A. I don't remember if by that time the closure seals had
20 already been changed or not, because they were
21 subsequently changed to a lion with the words "Superior
22 Tobacco." I don't remember whether the ones that we
23 received as selling samples were closure seals with a
24 lion or with the oval. I don't remember.

25 Q. But you think that you received those in June, 1984?

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Mr. Countryman/by Ms. Bagley

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A. I believe so.

Q. When the closure seal was changed, were you sent changed selling samples?

A. I don't remember.

MR. JAMES: He already said that he

doesn't remember whether the initial

ones that he got had the -- I believe

that was his testimony. Maybe I'm

mis-stating it.

Q. I guess the record will speak for itself because I thought he said something else. So I think we're fine. If we could go back to Countryman Exhibit 1, if I could direct your attention to page nine of this document. This is a list of major direct accounts in department 13 as of August, 1983?

MR. JAMES: Object to the form.

A. It's a list of some accounts in the department, and, frankly, I don't remember if I put this together as a list of the top ten accounts in volume performance order or not.

Q. How else might you have determined the ranking here?

MR. JAMES: Object to the form.

A. Let me refresh my memory -- I think at this point in time, this was a volume ranking of percent of business done by these customers at that point in time.

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Mr. Countryman by Ms. Bagley

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Q. Are each of these ten accounts still a direct customer of Brown & Williamson Tobacco Company?

A. Yes.

Q. Do each of these accounts as of today carry generic cigarettes, not necessarily Brown & Williamson's, but any generic cigarette?

A. To my knowledge, they all carry generics, yes.

Q. If I could now direct your attention to page 14. There's reference on this page to generic U.S. share and also the generic share in trading area 13, is that correct?

A. That's correct.

Q. And the generic share in trading area 13 is larger than the U.S. share?

A. The indications are on this page that it is, yes.

Q. Did you have an opinion for the reason that the generic share was larger in trading area 13 than it was in the United States overall?

MR. JAMES: What, at the time?

Q. Yes.

A. Could you ask that question again, I'm not sure I understood it.

Q. At the time that you prepared this document, did you have an opinion as to the reason that generics had a larger share in trading area 13 than they did in the United

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Mr. Countryman/by Ms. Bagley

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2 States overall?

3 A. I'm sure at the time that I developed the document, I
4 had an opinion, but at this point, I'm not sure what
5 that opinion was.

6 Q. Do you have an opinion now as to why that was true at
7 the time?

8 A. I have two basic opinions as to why generics have done
9 better here than they may have in other parts of the
10 country.

11 Q. What are those two opinions?

12 A. Well, obviously, generics have done well because of the
13 continuing escalation of nationally-branded products
14 and the price disparity between national branded products
15 and generics. And the fact that generics tend to be
16 sold -- the greatest majority of them tend to be sold
17 to middle-income and lower-income Americans. And,
18 obviously, within the Carolinas, we have a lot of
19 blue-collar workers, mill workers, and the Carolinas,
20 specifically, have been affected by a lot of layoffs
21 within the textile industry which from a financial
22 standpoint have made generic cigarettes much more
23 attractive to those consumers than they might somewhere
24 else in the United States.

25 Q. Is that both?

A. That's both opinions.

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Mr. Countryman/by Ms. Bagley

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Q. Okay, I couldn't tell.

A. The price and the economic situation in the Carolinas.

Q. At the time that you prepared this report, did you feel that Brown & Williamson sales were being disproportionately hurt by generic sales?

A. I think at the time this report was produced, yes, I was of that opinion that we were suffering, probably, a larger loss to generics than possibly some of our other competitors were.

Q. Is that still your opinion, or has that changed?

A. Based on --

MR. JAMES: Well, just a minute. You mean, has Brown & Williamson suffered more from the sale of --

Q. No -- I'm asking you if it's still your opinion that that was correct at the time, because you said at that time you believed this.

MR. JAMES: Does he now believe that that was true at that time?

Q. Right.

A. Yes, I believe that at this point in time, we suffered a larger loss of business than some of our competitors did, and I still believe that.

(WHEREUPON, there was held a discussion off the record which was not reported.)

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Mr. Countryman (by Ms. Bagley)

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Q. I'd like to now show you a document that's previously been marked as Tyler Exhibit 1, and ask you to look at it, please?

A. Yes.

Q. Do you recall when you saw it first?

A. Yeah, I believe it was the document that was used to introduce us to generic cigarettes in May of 1984.

Q. At the meeting that we've discussed earlier today?

A. Yes, ma'am.

Q. I'd like to direct your attention to page 79490 of this document.

MR. JAMES: I guess the pages aren't numbered.

Q. Oh, I'm sorry -- yeah, page two of the document itself. That might be easier.

MR. JAMES: It's easier than using the stamp numbers.

Q. Under the heading Strategies down under number C., 2., there's a reference to offer to selected key customers?

A. Uh-huh (yes).

Q. Do you recall that being discussed at that meeting?

A. Very vaguely.

Q. Were any lists of these key customers circulated at this meeting?

A. I don't remember if we produced lists at that meeting or

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Mr. Countryman by Ms. Bagley:

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not.

Q. Were you ever asked to compile a list of key customers in your area for the initial offer of generic cigarettes?

A. I really don't remember if I put a list together or not.

Q. Do you remember how key customers were defined?

A. No.

Q. All right, if I can direct your attention to page three of this document, under letter E., it says, "Prioritized targeted accounts to achieve volume objective with minimum number of account calls." Do you know whether any accounts in your area were targeted accounts?

A. Maybe you could qualify what is meant by targeted accounts. There were select accounts -- or there were accounts that once we entered the generic market, obviously, we wanted to contact. They sold generics and, yes, we wanted to contact them.

Q. Could you give me a list of those accounts?

A. No, ma'am. I don't have a list.

Q. Do you remember any accounts that fit that description?

A. I can give you some of the accounts that I'm aware now are obviously volume customers that we would have wanted to contact.

Q. Okay, why don't we start with that?

A. Do you want it all?

Q. Is it a long list?

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Mr. Countryman by Ms. Bayley

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A. Well, let me put it to you this way. I have 143 direct accounts in the department. I can't remember them all.

Q. I can give you the top ten that appeared on the sheet that you've seen previously.

Q. Do you think that they would have been the key accounts and the targeted accounts?

MR. JAMES: Object to the form.

A. I think that they probably were included in the accounts that we wanted to contact, yes.

Q. Directing your attention now to page four of this document, there's a reference here to a volume discount structure. Do you recall discussing this structure at that meeting?

A. Vaguely.

Q. Had you ever seen a volume discount structure such as this one in the cigarette industry before this?

MR. JAMES: Are you asking just about generics, or about --

Q. In the cigarette industry in general.

MR. JAMES: Relating to any kind of cigarettes?

Q. Right.

A. No, ma'am. I had not seen any kind of list like this prior to our entry into the generic cigarette market.

Q. And not only hadn't you seen a list, but you hadn't

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CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

Mr. Countryman/By Ms. Bagley

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heard of this sort of program being used for the sale
of cigarettes?

MR. JAMES: Object to the form, I don't
think that's what he said.

Q. That's a new question, I'm not summarizing his testimony.

A. No, I was aware that other companies were paying some
type of rebate programs.

Q. Which companies were those?

A. I was aware of Liggett & Myers.

Q. For the sale of generic cigarettes?

A. Yes.

Q. How was that program structure?

MR. JAMES: If you know.

A. I don't know what it was prior to our entry, I just know
that direct accounts had informed us that they were
receiving rebates from Liggett & Myers.

Q. Were the Liggett rebates based on volume, prior to B&W's
entry?

A. I have no idea how they were based.

Q. I direct your attention to page five of this document,
there's a target customer list here. Could you tell me
whether any of the customers --

(WHEREUPON, there was held a discussion
off the record which was not reported.)

Q. Are any of the customers on this list in your department?

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Mr. Countryman/by Ms. Bagley

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A. Yes, one.

Q. And which is that?

A. Thomas & Howard.

Q. Do you know whether Mr. Schoenheiter made a presentation to Thomas & Howard?

A. To my knowledge, he did not make a presentation to Thomas & Howard.

Q. Okay, I need to say in May -- well, May, '85 -- May, '84, I'm sorry.

MR. JAMES: Thank you.

Q. Do you know who did make the initial presentation of the Brown & Williamson generic program to Thomas & Howard?

A. Yes, I did.

Q. Were you accompanied by anyone?

MR. JAMES: Can we have a time frame on this?

Q. I said the initial generic presentation. When was that presentation?

A. June, 1984.

Q. Okay, then we can go back to my question about whether or not you were accompanied by anyone?

A. I don't remember if I was accompanied on the initial presentations or not.

Q. Do you recall what rebate you offered Thomas & Howard in this initial presentation?

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Mr. Countryman/by Ms. Bagley

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A. No, ma'am.

Q. Do you recall any promotions that were offered to Thomas & Howard in this presentation?

A. No.

Q. Do you recall whether or not you offered them stickering?

A. No.

Q. Did Thomas & Howard begin buying B&W generic cigarettes as a result of this presentation?

MR. JAMES: I object to the form.

A. Which presentation are we referring to?

Q. Well, you testified that you made --

A. The initial presentation.

Q. Right.

MR. JAMES: Maybe his problem is that how is he to know whether Thomas & Howard started buying generic cigarettes as a result of this presentation. That's something that, really, this witness can't know. Maybe you could ask him if they told him anything to that effect.

Q. Did Thomas & Howard begin buying B&W generic cigarettes within a month after this initial presentation?

MR. JAMES: From Brown & Williamson?

Q. I think I said Brown & Williamson generics, didn't I?

MR. JAMES: Okay.

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Mr. Countryman by Ms. Bagley

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A. Again, there's a time frame problem because I don't know when the initial presentation was given and when they began making the initial purchase, or made the initial purchase.

Q. They did begin to purchase Brown & Williamson generics at some point?

A. Yes, they did.

Q. Approximately when was that?

A. I'd say July of 1984.

Q. Did Thomas & Howard purchase Liggett generics prior to July of 1984?

A. Some of their facilities did.

Q. Did those facilities continue to purchase Liggett generics after Thomas & Howard began buying Brown & Williamson generics in July, in approximately July of 1984?

A. Some of their facilities did.

Q. Do you recall in this initial presentation whether you took a selling sample of the pack?

A. I don't recall whether I did or not.

Q. During this period in approximately June, 1984, when you had first been given these selling sample packs, do you recall having any discussion with anyone about the similarity of those packs to the Liggett generic packs?

MR. JAMES: Object to the form.

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FORM NO. 12-1 IN PENCILS, PAGES 80-1, 100-6, 200-6, 300-1

Mr. Countryman/by Ms. Bagley

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1 A. What's referred to as similarity?

2 Q. Did you have a discussion with anyone in which anyone
3 C said that that pack looked like a Liggett generic pack?

4 MR. JAMES: Object to the form.

5 A. I kind of object to the question because if it's red and
6 white, you can say Winstons look like Marlboro.

7 Q. Right, but the question is did anybody say that?

8 A. They may have. Specifically, I don't remember an
9 individual that did, but someone may have said that. I
10 don't remember.

11 Q. Do you recall any customer ever mentioning the similarity
12 of the packs to you?

13 MR. JAMES: Object to the form.

14 A. I don't remember any customer making any specific
15 comments about -- or let me say it differently. I
16 don't remember any specific customer making specific
17 comments about the pack. I am aware that comments were
18 made, but I don't know who made them. I can't remember.

19 Q. Do you remember, generally, what the gist of those
20 comments were?

21 A. Yeah, the comments were that the packs were similar in
22 color because they were white and black, or white and
23 red, or white and green, or white and blue.

24 Q. Did anybody comment on the closure seal?

25 A. Not to my knowledge until after a point was made about

FORM 100-105 RE PORTERS PAPER & MFG. CO. 400 626 6314

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Mr. Countryman/b/ Ms. Bagley

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the closure seal by our competitors.

Q. And after that, there were comments?

A. Yeah, based on what was published in the media.

Q. Do you remember some of those comments?

A. They weren't really comments regarding the closure seal, but they were comments regarding our competitor making a fuss about it.

Q. During the time that you were presenting a sample selling pack, did any customer mention to you that the similarity of the packs would lessen consumer adversity to a change in generic supplier?

MR. JAMES: I'll object to the form.

A. No, I don't remember that comment being made.

Q. Is there an account in your department, McLean's?

A. I have a McLean Wholesale, yes.

Q. Okay, it's not the McLean that's mentioned on this list?

A. That's correct, it is not.

MR. JAMES: Just to clarify, that was on page --

Q. That's back on page five of Tyler Exhibit 1.

MR. JAMES: Okay, that's what you meant by "this list"?

Q. Correct. During the period May through July of 1984 when Brown & Williamson was introducing its generic cigarettes, did anyone from the Louisville head office

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Mr. Countryman by Ms. Bagley

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make a presentation to an account in your department?

MR. JAMES: Regarding generic cigarettes specifically?

Q. Yes.

A. Not to my knowledge.

Q. During that time period, did Mr. McCormick make any presentations in your department?

MR. JAMES: Again, regarding generic cigarettes?

Q. Yes.

A. Not to my knowledge.

Q. What is Mr. McCormick's job title?

A. Regional manager, generic sales.

Q. And how long has he been in that position?

A. I'm not real sure. I believe since November of 1984.

Q. I'd like to show you a document that's been previously marked as McCormick Exhibit Number 3, and ask you to look at that. Have you ever seen this document before?

A. Not to my knowledge.

Q. Are any of the accounts listed on this document in your department?

A. Yes, three of them are.

Q. Which are those?

A. Food Lion, Harris-Teeter and Community Cash.

Q. Do you know who made the initial presentation of the

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CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

Mr. Countryman/By Ms. Bagley

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Brown & Williamson generic program to Food Lion?

A. Janson Booth.

Q. He's a key account manager?

A. Yes, ma'am.

Q. Were you aware of what the presentation to Food Lion consisted of?

MR. JAMES: Object to the form.

A. I'm not sure I understand the question.

Q. Do you know what rebate was offered to Food Lion in the initial presentation?

A. The published rebates that were in place at the time.

Q. Do you know whether or not stickering was offered to Food Lion at that time?

A. No, I don't remember.

Q. Does Food Lion now carry Brown & Williamson generic cigarettes?

A. Yes, they do.

Q. When did they begin carrying Brown & Williamson?

A. I don't remember.

Q. Do you remember whether it was in this initial time period of May through July, 1984?

A. No, ma'am, it definitely was not.

Q. Do you remember was it in 1985 that they began carrying Brown & Williamson generics?

A. I don't believe it was.

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Mr. Countryman/By Ms. Bagley

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Q. Was it in 1986?

MR. JAMES: I object.

A. The situation is that I don't remember if it was in 1985 or 1986, but it definitely was not in 1984.

Q. Do you have a problem with that?

MR. JAMES: No, go ahead.

Q. Do you recall who made the initial presentation of the Brown & Williamson generic program to Harris-Teeter?

A. Janson Booth.

Q. Do you know about what time period he made this initial presentation in?

A. June of 1984.

Q. Does Harris-Teeter now carry Brown & Williamson generic cigarettes?

A. No, ma'am, they do not.

Q. Have they at any time carried Brown & Williamson generic cigarettes?

A. No, ma'am, they have not.

Q. Has Brown & Williamson made presentations to Harris-Teeter at any time subsequent to that initial presentation?

MR. JAMES: I'm going to have to say something for the record. As you know, we've taken the position that anything that occurs after August 31st, '85, is outside the scope of discovery, so I'll

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Mr. Countryman/by Ms. Bagley

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instruct you not to answer as to that,
if there were any.

Q. Well, the question I've just asked requires a yes or no
answer, so if we could start with that. And I do
understand your position.

MR. JAMES: Fine.

A. Now, are we talking about subsequent presentations?

Q. Anything subsequent to that initial presentation that
Mr. Booth made?

A. Yes, there have been.

Q. Do you know how many?

A. No, I do not.

Q. Do you know who has made those subsequent presentations?

A. Prior to what time period -- and if we're talking about
prior to August 31st, 1985?

Q. I guess we are talking about that?

A. I would say Janson Booth and myself prior to that point
in time.

Q. So you have made at least one presentation to Harris-
Teeter?

A. I have not made a presentation to them, but I've been
present when a presentation was made by Janson Booth.

Q. Do you remember what was offered in that presentation?

A. Not specifically, no.

Q. Do you remember whether any stickering was offered?

FORM OR 325 REPUTERS DATED A MFG CO 800 626 6311

824 18654

Mr. Countryman/ by Ms. Bagley

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A. No, I do not.

Q. During any period up to August 31st, 1985, has anyone told you a reason that Harris-Teeter has not accepted the Brown & Williamson generic offer?

MR. JAMES: Object to the form.

A. Could you re-state the question, please?

Q. The presentation that you were present at, did the buyer or the person that you were presenting to at Harris-Teeter tell you that they were not going to accept the offer?

A. Not at the time that the call was made.

Q. How did he convey that decision?

A. On a subsequent visit made by Mr. Booth.

Q. And did Mr. Booth tell you what reason was given to him?

A. Yes, he did.

Q. And what was that?

A. The reason was that they were satisfied with their current product line.

Q. Let's go to Community Cash stores, do you know who made the initial Brown & Williamson generic presentation to Community Cash stores?

A. Adam Smith.

Q. Is he a key account manager also?

A. Yes.

Q. Does Community Cash stores now carry Brown & Williamson

824 18655

CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

Mr. Countryman, by Ms. Bagley

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generic cigarettes?

A. Yes, they do.

Q. When did they begin purchasing Brown & Williamson generic cigarettes?

A. March or April, 1986.

Q. Whoops.

MR. JAMES: All right. I instruct you not to answer anything that's after August 31st of '85.

Q. Okay, well, I guess he has to tell me the date in order for us to know that --

MR. JAMES: Yeah.

Q. Were you present at any presentation to the Community Cash stores of Brown & Williamson generic cigarettes before August 31st, 1985?

A. Not to my memory.

Q. Did Mr. Smith or anyone else convey to you the reason that Community Cash stores did not accept the Brown & Williamson generic offer as of August 31st, 1985?

A. They were happy with the product line they had at the time.

Q. Do you recall attending a field manager's meeting in November of 1984?

A. I go to so many meetings I can't be explicit.

Q. Are there regular field manager's meetings in Louisville?

824 18656

Mr. Countryman/by Ms. Bagley

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- 1 A. Could you ask that question a little differently?
- 2 Q. Are meetings of the field managers held on a regular
- 3 basis in Louisville?
- 4 A. No, ma'am.
- 5 Q. The May meeting that we've spoken about, was that in
- 6 Louisville?
- 7 A. I'm sorry, I didn't hear you?
- 8 Q. The May meeting that you've testified about earlier
- 9 today, was that in Louisville?
- 10 A. Yes, it was.
- 11 Q. I'd like to show you a document that's been previously
- 12 marked as McCormick Exhibit 1 and ask you to look at it.
- 13 Have you seen this document before?
- 14 A. Never.
- 15 Q. Does this document refresh your recollection about a
- 16 field manager's meeting that was held in November, 1984?
- 17 A. No.
- 18 Q. You still don't remember?
- 19 A. I do not remember.
- 20 Q. Okay. This is a good time for a break if you'd like to
- 21 take one.
- 22 (WHEREUPON, a five minute recess was held.)
- 23 Q. Have you made presentations to accounts that have
- 24 included a volume rebate payment?
- 25 MR. JAMES: I object to the form.

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Mr. Countryman by Ms. Bagley

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A. Maybe you could re-state the question?

Q. Have you made a presentation to an account in which you presented the Brown & Williamson generic program, including an amount that that account would receive as a volume rebate?

A. Yes.

Q. Have you made a presentation that compared the amount that account would receive as a Brown & Williamson rebate to what it might receive as a Liggett rebate?

A. Yes.

Q. Do you recall the accounts to which you made those presentations?

A. No.

Q. Do you recall whether the Brown & Williamson rebate or the Liggett rebate was larger in that comparison?

MR. JAMES: Object to the form.

A. Maybe you could re-state the question?

Q. Well you've testified that you made presentations that compared the Brown & Williamson and Liggett rebates. When you made that comparison, which rebate was larger?

MR. JAMES: Objection. I think where part of the problem may be, there may have been more than one presentation. You may be talking about different volume levels, so it may be hard to answer that

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Mr. Countryman, by Ms. Bagley

question.

Q. Well, the problem is he doesn't recall a specific instance. Do you recall making that comparison?

A. Yes.

Q. Each time you made that comparison, was the Brown & Williamson rebate offer larger than the Liggett rebate offer?

MR. JAMES: You're asking every single time?

Q. Now, that's what I'm asking now.

A. Can I have a minute?

Q. Yes, do you want us to go outside?

A. Whatever you prefer because I need to ask --

(WHEREUPON, there was held a discussion off the record which was not reported.)

MR. JAMES: I think the problem with the question is it's hard to make that kind of comparison unless you specify for a given rebate level. Maybe you could say in a given rebate level, was the Brown & Williamson offer higher. Do you understand what I'm saying?

Q. Well, I do understand, but I'm talking about presentations that he made.

MR. JAMES: Well, the presentations as he

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Mr. Countryman/By Ms. Basley

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knows, he's seen what his rebate
schedules are based upon, assuming
different volume levels of sales, so
what we have to talk about is -- you
have to limit it to a specific volume
level in order for there to be a
comparison.

Q. Well, he had testified that he had made comparisons in
a number of presentations, so -- the question will stand.
If he can't answer it, that's fine. I'd like for him
to attempt to answer the question as it is.

MR. JAMES: Well, I'll object to the form.

Q. That's fine.

A. I would answer the question this way, then. Based on any
presentations that I personally made with a specific
volume for that customer, the comparison were always
such that Brown & Williamson had a higher rebate program.

Q. And you don't remember which customers you made these
presentations to?

A. Not specifically, no.

Q. Do you ever suggest to an account that it purchase Brown
& Williamson generic cigarettes in order to receive a
larger rebate than they were receiving from Liggett?

A. Yes.

Q. Do you recall which accounts you made that suggestion to?

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Mr. Countryman/By Ms. Bagley

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A. Not specifically.

Q. Do you have any general recollection of -- you just remember doing it, but you don't remember the names of the account?

A. That's correct.

Q. Do you recall any time when you made a presentation to an account being told by that account that they were receiving a higher rebate from Liggett than you had offered them?

A. Could you ask that question differently, please?

Q. Okay, we'll try that again. Do you recall being told by an account that they were receiving a higher rebate from Liggett than you had offered that account?

A. Yes.

Q. Do you recall which accounts those were?

A. I can remember one specifically.

Q. Which one was that?

A. Thomas & Howard, Rocky Mount, North Carolina.

Q. Do you recall what rebate Liggett was offering Thomas & Howard?

A. They changed every other day for a period of about a month and a half during the initial introduction. So, no, I don't remember the specific amount.

Q. So throughout this period, Liggett was offering a higher rebate amount than Brown & Williamson was?

824 18661

CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

FORM OF USE, REPRODUCED, PARTIAL AND FULL 800 636 6111

Mr. Countryman by Ms. Bagley

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MR. JAMES: To Thomas & Howard.

Q. To Thomas & Howard?

A. Through what period?

Q. The period that you're speaking about where it changed so frequently?

MR. JAMES: Well, why don't we just settle what period we're talking about.

Q. He said that he remembered --

MR. JAMES: Why don't you just ask him what period that referred to, and then maybe we could take it from there.

Q. I'll adopt your suggestion.

A. I would say mid-June, 1984 to August, 1984.

Q. Do you remember any time outside of this period when you were told by Thomas & Howard that they were receiving a larger rebate from Liggett than they had been offered by Brown & Williamson?

MR. JAMES: Subject again to our objection about August 31st, 1985.

A. No, I don't remember. Let me qualify that, do I have access to those documents?

MR. JAMES: No.

A. I take a pass.

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Mr. Countryman/By Ms. Bagley

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Q. Have you ever increased your offer of a Brown & Williamson generic rebate in response to being told by an account that Liggett was paying them a larger rebate?

A. Could you ask that question differently?

Q. Have you ever matched Liggett's rebate offer to an account?

MR. JAMES: I'll object to the form.

A. I think I would still require further clarification of the question?

Q. What don't you understand?

A. You're asking me if I have done it, and I can't do anything in terms of making rebates available to the customers. Now, if you're asking did the company do it, if you could ask the question that way, I might --

Q. Okay, did the company raise its rebates in response to Liggett's rebates?

A. Not to my knowledge in the area I supervise.

Q. Have you ever offered a rebate to an account other than the Brown & Williamson published rebate offer?

A. No, ma'am.

Q. Have you ever offered or paid an account a rebate that was larger than that account would receive based on its individual volume?

A. No, ma'am.

Q. Have you ever promised or paid an account a rebate

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CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

CONFIDENTIAL REPORT BY LADDER & MFG. CO. 800 625 6113

Mr. Countryman, by Ms. Bagley:

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regardless of its generic volume?

MR. JAMES: Object to the form.

A. Could you ask the question again, please?

Q. Have you ever promised a generic customer a specified rebate regardless of their volume?

A. No, ma'am.

Q. I'd like to show you a document that's previously been marked as Dant Exhibit 15 and ask you to look at that. Have you seen this document before?

A. No, ma'am.

Q. There's a reference in the last paragraph of this document. Mr. Dant says, "If you know of any customers that we've just started shipping during the fourth quarter that were promised a specified rebate regardless of their volume, I need to know who they are ASAP." There were not any customers in your department that fell into this category?

MR. JAMES: Object to the form.

A. Not to my knowledge.

Q. To your knowledge, is the rebate paid to an account based on the volume of generic purchases contained in the contract signed by that account?

A. Not to my knowledge.

Q. Do you know what the rebate paid to an account, which volume that's based on?

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Mr. Countryman/by Ms. Bagley

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MR. JAMES: Object to the form.

A. Ask the question differently, I didn't understand it.

Q. When Brown & Williamson determines which rebate category in which to place an account in which to pay the account rebate, which volume is that based on -- the actual volume or the contracted volume?

A. To my knowledge, it's based on the actual volume of business for generic cigarette sales.

Q. When an account begins purchasing Brown & Williamson generic cigarettes, do they sign a contract with Brown & Williamson?

MR. JAMES: Object to the form.

A. Could you ask the question a little differently?

Q. I'm sorry, what don't you understand about that?

A. I would answer the question --

MR. JAMES: Well, it's very broad.

There might be any number of practices.

Q. I'm just asking if there's a contract signed when an account begins purchasing Brown & Williamson generics?

MR. JAMES: Are you asking as to every single account that he's aware of that the company has?

Q. He can answer that it's happened sometimes, none, never.

MR. JAMES: Okay, answer it if you can.

I object to the form.

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Mr. Countryman/ by Ms. Bagley

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A. When we entered the generic market in June of 1984, a form was signed that was a form under the Hartland Tobacco Company organization. When that organization was dissolved, to my knowledge, no additional forms have ever been signed.

Q. Did that Hartland form include a statement of estimated quarterly volume?

A. I don't remember.

Q. Have you ever heard of the term proration in connection with generic rebate payments?

MR. JAMES: I'll object to the form.

A. I really don't remember having heard that.

Q. When a customer begins purchasing Brown & Williamson generics in the middle of a quarter, how is his volume rebate category determined, if you know?

A. I don't know.

Q. Have you ever told an account who began purchasing generics in the middle of a quarter which category they'd fall into, which volume category they'd fall into?

MR. JAMES: Do you mean how many cartons they'd actually sell?

Q. No, which category, volume rebate category, they'd be in?

MR. JAMES: Wouldn't he have to know how

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Mr. Countryman/by Ms. Bagley

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many cartons --

2 Q. That's what I'm trying to figure out.

3 A. When customers have initiated an ordering process in
4 the middle of a quarter, the only thing that we can do
5 is advise them what they would be paid on their actual
6 volume during that quarter.

7 Q. The actual volume in that quarter?

8 A. Uh-huh (yes).

9 Q. So if an account purchases 500 carton cases in that
10 quarter, they'll be paid at the level of 500 cases
11 per quarter volume rebate level?

12 A. That's my understanding.

13 Q. And that's what you've told every customer in your
14 department?

15 MR. JAMES: Object to the form.

16 A. I've told customers that I've personally contacted that
17 they would be paid at the rate that was established for
18 the volume of business that they did during the quarter.

19 Q. We're talking about the first quarter when they began
20 purchasing generic cigarettes?

21 MR. JAMES: I'm sorry, is that a
22 question?

23 Q. Yes.

24 A. I don't know.

25 Q. When you presented the Brown & Williamson generic program

824 18667

CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

EXHIBIT 100 - REPORT BY DAVID R. MFG. CO. 000 000 000

Mr. Countryman/ by Ms. Bagley

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1 to accounts in the third quarter of 1984, did you tell
2 these accounts that their rebate would depend on the
3 actual volume purchased in that quarter?

4 A. I don't remember.

5 Q. Did you ever tell a customer that if they had achieved
6 50 percent of their contracted volume by the end of the
7 third quarter of 1984, they would be paid at the
8 contracted volume level?

9 A. I don't remember.

10 Q. I'd like to show you a document that's previously been
11 marked as Dant^o Exhibit 8. Have you seen this document
12 before?

13 A. Yes.

14 Q. Did you receive this document in the normal course of
15 your business?

16 A. Yes.

17 Q. Did you receive it on or about June 22nd, 1984?

18 A. Yes.

19 Q. Directing your attention to paragraph numbered one
20 entitled "Proration of Partial Calendar Quarters" does
21 this refresh your recollection that an account's
22 purchases were prorated in the first quarter in which
23 he purchased Brown & Williamson generic cigarettes?

24 MR. JAMES: I'm sorry, could you read
25 that back?

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Mr. Countryman/by Ms. Bagley

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A. Yeah, I lost that myself.

(WHEREUPON, the question appearing on
page 54, lines 19 through 23, was read
back by the Reporter.)

Q. Does this refresh your recollection that an account's
purchases in its first quarter of purchases was prorated
for the purpose of calculating the volume rebate?

A. Yes.

Q. So this happened with accounts in your department?

A. I don't know.

Q. Did you offer accounts -- did you tell accounts in your
department that their purchases would be prorated in
their first quarter?

A. I don't remember telling any of that.

Q. Do you remember whether any key account managers or
division managers in your department told accounts that?

A. I don't remember.

Q. Was the rule applied as is described in this paragraph
one, to your knowledge?

MR. JAMES: In his department, I assume
you mean?

A. I don't remember.

Q. I'm going to direct your attention now to the first
paragraph on the second page of this exhibit. Four lines
down, there's a sentence, "Therefore any customer who is

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Mr. Countryman/ by Ms. Bagley

56.

at least half the way towards his contracted volume by the end of the third quarter will be paid at his contracted carton rebate rate." Do you know whether any accounts in your department were paid at their contracted carton rebate rate if they were at least half the way towards that contracted volume?

A. I don't know.

Q. Did you ever quote a 50 percent rate to your accounts?

A. No.

Q. Do you know whether or not your key account managers or division managers or sales reps quoted that rate to your accounts?

A. No, I do not.

Q. You do not know whether or not they did?

A. That's correct.

Q. Did you ever tell an account that had previously purchased Liggett generics that it would be paid at the Liggett rebate rate for its first quarter of Brown & Williamson generic purchases?

A. Ask that question one more time, please?

Q. Did you ever tell an account that had previously purchased Liggett generics that Brown & Williamson would pay that account at the Liggett rebate level for its first quarter of Brown & Williamson generic purchases?

A. No, ma'am.

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Mr. Countryman/By Ms. Bagley

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Q. Have you ever heard of that?

A. No, ma'am, I have not.

Q. Have you ever heard the term "grouping" in connection with generic cigarettes?

MR. JAMES: Object to the form.

A. No, I have not.

Q. Have you ever heard the term "consortium"?

A. Yes, I have.

Q. What is your understanding of what a consortium is in connection with generic cigarettes?

A. My understanding is that a consortium is a group of wholesalers that can band together of their own choice to increase the rebates that each member can be paid based on the total purchases of the consortium as a whole.

Q. Were any accounts in your department members of consortiums --

A. Yes.

Q. As you have defined them?

A. Yes.

Q. Which were those accounts?

A. Thomas & Howard, Rocky Mount, North Carolina.

Q. Is that it?

A. That's the consortium.

Q. Okay, but what I'm asking is is there any accounts in your department that were members -- is that the only

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one that was a member of a consortium?

A. No.

Q. Which other ones?

A. MDI, which is Merchants Distributing, Incorporated;
and Ingle's Supermarkets.

Q. These are two separate?

A. Which are two separate?

Q. MDI and Ingle's Supermarkets, are those two separate
accounts or --

A. Yes, they are two separate accounts.

Q. They're in the same consortium?

A. Yes.

Q. And which consortium is that?

A. The MDI/Ingle's consortium.

Q. Are any other accounts in your department besides the
three you've named members of consortiums, to your
knowledge?

A. Members of consortiums, yes.

Q. In connection with the purchase of generic cigarettes?

A. Yes.

Q. Which are those?

A. Thomas & Howard, Newton, North Carolina.

Q. All right?

A. Thomas & Howard, Spartanburg; Thomas & Howard, Charlotte;
Thomas & Howard, Florence; and I believe that's all.

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<http://legacy.library.ucsf.edu/tid/yk07a00/pdf> <http://www.industrydocuments.ucsf.edu/docs/nsxl0001>

Mr. Countryman by Ms. Bagley

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Let me clarify that statement. I informed every account that I personally called on that the consortium concept existed.

Q. Did you inform some accounts about a specific consortium?

A. No, ma'am.

Q. What was your understanding of what an account had to do in order to become a member of the Thomas & Howard consortium?

A. My understanding was that an account would have to contact Thomas & Howard and that the management from Thomas & Howard would either approve or disapprove their membership into their consortium group.

Q. Do you have any understanding of what fees, if any, an account would have to pay in order to be a member of the Thomas & Howard consortium?

A. Could you ask that question differently, please?

Q. Did you have an understanding of whether or not an account was required to pay something to a consortium in order to be a member?

A. I'm still not sure I understand the question.

Q. Well, --

MR. JAMES: Are you talking about an initial payment, or --

Q. Just any payment that they might have to make --

MR. JAMES: You mean after they were a

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<http://legacy.library.ucsf.edu/tid/yk-07a00/pdf> www.industrydocuments.ucsf.edu/docs/nsxl0001

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Q. No account ever told you the reason it didn't want to join?

A. I remember accounts making the statement that they didn't want to join a consortium because they didn't want somebody else receiving their rebates and then further dispersing them.

Q. Do you remember which accounts told you that?

A. No, ma'am.

Q. Are you aware of any account that attempted to join a consortium and was not approved by that consortium for membership?

A. No, ma'am.

Q. Are you aware of the fact that in addition to the volume rebate payment, Brown & Williamson offered a bonus rebate of 10 cents to accounts?

A. No.

Q. During 1984 when you made presentations to an account, did those presentations include a bonus rebate of 10 cents per carton?

A. What's a bonus rebate consist of?

Q. You don't have any understanding of a rebate --

A. I'm not sure I understand how you're asking the question.

Q. A payment of 10 cents per carton called a bonus rebate on a Brown & Williamson presentation?

A. When we initiated our program in June of 1984, there was

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Mr. Countryman/by Ms. Bagley

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1 a volume rebate program and a rapid signing bonus rebate
2 program.

3 Q. How long was that rapid signing bonus rebate -- for what
4 period was that rebate paid?

5 A. I don't remember.

6 Q. At some point it was stopped?

7 A. Yes.

8 Q. Are you aware of a promotional allowance payment that
9 was made by Brown & Williamson?

10 A. Yes.

11 Q. What period was that offered during?

12 A. I don't remember.

13 Q. Do you recall what the amount of that rebate was?

14 A. I recall the maximum amount was 10 cents.

15 Q. Was that 10 cents for consumer promotions?

16 A. No, it was 10 cents per carton.

17 Q. 10 cents per carton based on consumer promotions?

18 A. I believe that's correct.

19 Q. Was there a separate payment if the account chose to
20 make retailer promotions?

21 A. Yeah, I believe there was.

22 Q. Do you recall what the amount of that payment was?

23 A. I believe it was 3 cents.

24 Q. What did an account have to do in order to receive these
25 payments of 10 cents or 3 cents?

824 18677

Mr. Countryman/by Ms. Bagley

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1 A. They had to initiate an agreement that indicated that
2 they would perform and that agreement had to be returned
3 to our head office in Louisville. And then they had to
4 facilitate some type of retailer promotion or consumer
5 promotion that would qualify them.

6 Q. Did they need to have any proof of performance of those
7 consumer or retailer promotions?

8 MR. JAMES: Object to the form.

9 A. I don't know.

10 Q. Did you personally require them to prove that they'd
11 performed the consumer or retailer promotion?

12 MR. JAMES: Object to the form.

13 A. I'm not sure I understand the question.

14 Q. Did you monitor or check accounts to see whether or not
15 they had performed in accordance with the agreement that
16 they had signed?

17 MR. JAMES: Are you saying him, personally?

18 Q. We'll start with that?

19 A. Yes, I personally checked some.

20 Q. Do you remember which accounts those were?

21 A. No, not offhand.

22 Q. Do you know whether or not your key account managers or
23 sales reps or division managers monitored an account's
24 performance?

25 A. I really don't know.

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Mr. Countryman/by Ms. Bagley

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Q. Do you know whether it cost the accounts anything to perform the promotions that they had agreed to perform?

MR. JAMES: Object to the form.

A. There have been several retailers that have initiated programs at their expense.

Q. But in order to comply with the promotion agreement signed, would an account necessarily have to spend money?

MR. JAMES: Object to the form.

A. I don't know that I can answer that question.

Q. Did you ever tell an account whether or not it would cost them money to comply with the performance agreement?

A. No, I did not.

Q. Have you ever discussed Liggett's co-op ad program with accounts?

A. No.

Q. Have any accounts ever spoken to you about the Liggett ad program?

A. Not me, personally.

Q. Do you know whether or not Brown & Williamson has ever refused to pay an account a promotional allowance because they did not perform in accordance with the promotional agreement?

A. Would you ask the question again?

Q. Do you know whether or not Brown & Williamson ever

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Mr. Countryman, by Ms. Bagley

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refused to pay an account --

A. No, I don't know.

Q. Are you aware of what Brown & Williamson's terms on its generic cigarettes are?

MR. JAMES: Object to the form.

A. I'm sorry, I don't understand the question fully.

Q. Do you understand the term "terms" in connection with generic cigarettes?

A. I think so.

Q. What's your understanding of that?

A. The amount of discount that's afforded a customer based on the way they pay their bills.

Q. Based on your definition of terms, what are Brown & Williamson terms in connection with generic cigarettes?

A. 2 percent, 14 days.

Q. Has that always been the terms on Brown & Williamson generic cigarettes?

MR. JAMES: Are we talking about generics now?

Q. Yeah, I just said generics.

MR. JAMES: I thought you said cigarettes, I'm sorry.

Q. I'm saying it pretty quickly, I'm sorry.

A. I don't believe so.

Q. There was an introductory period where there were

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different terms?

A. I believe so.

Q. Do you know what those terms were during the introductory period?

A. I don't remember.

Q. Were they 2 percent, 30 days?

A. I don't remember.

Q. Are you aware of what Liggett & Myers' terms on their generic cigarettes are?

A. Yes.

Q. What are they?

A. 2 percent, 12 days.

Q. Have you ever told an account that Brown & Williamson had better terms on their generic cigarettes than Liggett does?

A. Yes.

Q. Have you ever put a value on that difference in those terms?

MR. JAMES: Do you mean when he's talking to the customer, or just in his own mind?

Q. Well, either one.

A. Ask the question again, please?

Q. Have you ever put a money value on the difference between Brown & Williamson's generic terms and Liggett's generic terms?

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Mr. Countryman/by Ms. Bagley

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A. I have not, no.

Q. Do you know what that difference is worth to an account?

MR. JAMES: Object to the form.

A. No, I do not off the top of my head.

Q. Have you ever heard the term "distribution allowance" in connection with generic cigarettes?

A. I don't remember.

Q. Have you ever offered an account a distribution allowance for Brown & Williamson generic cigarettes?

MR. JAMES: He said he doesn't remember.

A. I'm not familiar with the term.

Q. Are you familiar with the term "display allowance"?

A. Yes.

Q. What does that mean to you?

A. It means that an organization puts up a physical display of Brown & Williamson products and then they are afforded some type of payment for that service.

Q. Have you ever offered or paid display allowances in connection with Brown & Williamson generic cigarettes?

A. No, ma'am, I have not.

Q. Do you know whether any accounts in your department have been offered a display payment or display allowance?

A. I don't know. I don't remember.

Q. Are you familiar with the term "handling allowance" in connection with the sale of generic cigarettes?

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Mr. Countryman/by Ms. Bagley

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A. No.

Q. So you have not offered a handling allowance in connection --

A. No, ma'am.

Q. In connection with the sale of Brown & Williamson generic cigarettes?

A. No, ma'am.

Q. Are you familiar with the term "plus out payments"?

A. Yes, I am.

Q. And what does that term mean to you?

A. That means that a tobacco company will pay a retailer, basically a chain retailer, to automatically ship product to their respective stores.

Q. Have you ever offered or paid a plus out payment, as you've just defined it, in connection with the sale of Brown & Williamson generic cigarettes?

A. I have not, no.

Q. Do you know whether a plus out payment has been offered or paid to any account in your department?

A. Yes, I do.

Q. And has it?

A. Yes.

Q. Which account has received that payment?

A. I don't remember any specific accounts.

Q. What do you remember?

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Mr. Countryman/By Ms. Bagley

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A. I just know that plus out allowances have been paid to some accounts. I don't remember the specific accounts.

Q. Do you know whether or not those payments have been offered to all accounts?

A. No, I don't know that.

Q. Do you know how much the plus out payment that was paid -- what the amount of that payment was, either per carton or otherwise?

MR. JAMES: Are we talking about a particular one now?

Q. Whichever ones she remembers.

MR. JAMES: For any ones that you remember, do you know what was offered?

Q. Or paid?

A. 20 cents, I believe.

Q. That's a per carton payment?

A. Uh-huh (yes).

Q. Do you recall how the number of cartons was determined?

A. Not really.

Q. Are you familiar with the term "PM" in connection with the sale of cigarettes?

MR. JAMES: I'm sorry, P --

Q. PM?

MR. JAMES: PM?

A. I've heard the term and to me it means promotional money.

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Mr. Countryman/by Ms. Bagley

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Q. Is this a payment made to a customer salesman?

A. That could be one way, yes.

Q. Have you or Brown & Williamson ever offered or paid a PM or another payment to a customer's salesman in connection with the sale of generic cigarettes?

A. I don't know.

Q. Has Brown & Williamson offered any sort of incentive to a customer's salesman in connection with the sale of generic cigarettes?

MR. JAMES: Object to the form.

A. I don't know.

Q. Have you heard the term "warehousing allowance"?

A. No.

Q. Have you heard of a introductory allowance paid in connection with the sale of Brown & Williamson generic cigarettes?

MR. JAMES: Object to the form.

A. Ask the question again, please, in a different way? I don't understand it.

Q. Why?

MR. JAMES: Maybe if you could define what you mean by "introductory allowance"?

Q. I'm trying to get a definition of it.

MR. JAMES: Why don't you ask him if he

824 18685

Mr. Countryman/by Ms. Bagley

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knows what an introductory allowance
is?

Q. Well, I'll try that one -- that didn't sound too good
either, but we'll try that. Do you know what an
introductory allowance is?

A. An allowance, I would assume, to introduce a product
into a retail account.

Q. Do you know whether or not that payment, as you've
defined it, has been made in connection with the sale of
Brown & Williamson generic cigarettes?

A. Yes.

Q. It has been made?

A. Yes.

Q. In your department?

A. Yes.

Q. Do you know to which accounts?

A. Not specifically, no.

Q. Do you know what the amount of that introductory
allowance payment was?

A. No, I don't know.

Q. Do you know if it was in the form of a per carton
payment?

A. I really don't know.

MR. JAMES: Would this be a good time
to take a break?

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Mr. Countryman/by Ms. Bagley

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Q. It would be.

MR. JAMES: Good.

(WHEREUPON, a five minute recess was taken at this time.)

Q. Are you familiar with the term "stickering" in connection with the sale of generic cigarettes?

A. Yes, I am.

Q. What does that mean to you?

A. It means you apply stickers to cartons of cigarettes.

Q. Did Brown & Williamson have a stickering program in 1984?

MR. JAMES: With respect to generic cigarettes again?

Q. Yes.

A. I don't remember.

Q. Do you remember whether or not any accounts in your department received stickers from Brown & Williamson during 1984?

A. I don't remember.

Q. Did Brown & Williamson have a stickering program in 1985?

A. Yes.

Q. How did that program work?

A. Could you clarify that a little bit?

Q. Was this part of a national stickering program?

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Mr. Countryman/by Ms. Bagley

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A. To my knowlege, yes.

Q. During what time period was that program running for?

A. To my knowledge, all year long.

Q. Under that program, how did you determine how many stickers each account would get?

A. It was generally based on a guide of approximately one week's average movement.

Q. So during 1985, each account was offered one week's average movement worth of stickers?

MR. JAMES: Object to the form.

A. Yeah, I'm not sure what you mean by each account.

Q. Was every account offered stickering under the program that you've been describing?

A. I'm not sure.

Q. I'm asking whether every account in your department was offered stickering, I just wanted to clarify that?

A. I'm not sure because I have 17,000 retail outlets.

Q. Did you instruct your key account managers and division managers and sales reps to offer stickering to every account in your department?

A. I think every account that handled B&W generics.

Q. That seems fair enough. And was each of these accounts offered one week's average movement worth of stickers?

A. I really don't know.

Q. Did any accounts receive more, during 1984, more than

824 18688

Mr. Countryman/by Ms. Bagley

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one week's average movement?

MR. JAMES: Aren't we talking about '85?

Q. I'm sorry, '85?

A. I don't know.

Q. Were wholesalers offered stickers?

A. Yes.

Q. How does the stickering program work with wholesalers?

MR. JAMES: Object to the form.

A. Maybe you can clarify the question a little further?

Q. Do wholesalers receive one week's average movement worth of stickers?

MR. JAMES: Object to the form.

A. I'm not sure I understand your question still.

Q. How did you determine how many stickers each wholesale account got?

A. Generally, by the orders that were booked through the retailers that they serviced.

Q. So was the stickering program offered to the wholesalers or to the retailers that they serviced?

A. Generally, to the retailers that they serviced.

Q. But some wholesalers were also offered stickering?

A. Yes.

Q. And they could distribute the stickered cartons to whichever retailers they serviced, that decision was up to them?

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Mr. Countryman/by Ms. Bagley

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A. I believe that's correct.

Q. Did B&W employees actually apply the stickers to cartons in every instance in your department?

MR. JAMES: Object to the form.

A. Now, what's meant by every instance?

Q. Whenever you offered stickering to an account and they accepted that offer, did a B&W employee actually apply the stickers to the cartons of that account?

A. To the best of my knowledge, we apply stickers to the cartons, yes.

Q. Did you ever offer to pay a customer's warehouse personnel to apply the stickers to the product?

A. Not to my knowledge, in my department.

Q. Did you ever give an account the stickers and allow the account to apply them themselves?

A. Yes.

Q. Do you remember which accounts?

A. I can remember Atlantic Tobacco Company.

Q. Do you remember approximately how many stickers they were given?

A. No, I do not.

Q. Do you know approximately what Atlantic Tobacco Company's average one-week movement is?

A. Not off the top of my head, no, I don't.

Q. But they were given stickers and told to apply the

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Mr. Countryman/by Ms. Bagley

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stickers themselves?

A. No, I believe in my department, I believe, my people applied most of the stickers.

Q. I thought you testified that Atlantic Tobacco Company was one example of an account that --

A. Let me clarify that, the only place that I know that it occurred was Atlantic Tobacco. There are two branch facilities in the Carolinas, in North Carolina -- excuse me. And they had an employee that we also used as a PPT, permanent part-time employee, that applied the stickers. So in that sense, it was their employee and our employee.

Q. Did you have a budget for the amount of stickering you were able to do in your department?

A. Yes, ma'am.

Q. Did you have a budget in 1984 for stickering?

A. I don't remember.

Q. Did you have a budget in 1985 for stickering?

A. Yes, ma'am.

Q. Was this budget only for stickering, or could you spend that budget on other things?

A. What are considered other things?

Q. Anything other than stickering?

A. I think, yes.

Q. Yes, you could spend it on something other than

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Mr. Countryman/by Ms. Bagley

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stickerings?

A. Yes.

Q. Did you spend that budget on something other than stickerings in 1985?

A. Yes.

Q. What other things did you pay for out of that budget?

A. Force out allowances.

Q. Do you remember which accounts received force out allowances?

A. No, ma'am.

Q. Could you tell me what you mean by force out allowance?

A. We've discussed that already.

Q. Did we discuss it under the name plus out payment, or --

A. Plus out, yeah, that's correct.

Q. Okay, so a force out allowance is the same thing?

A. The same as a plus out.

Q. Is there anything other than stickerings and force out allowances that were paid for out of this budget?

A. Not to my knowledge.

Q. Did this budget that we're speaking of have a name?

A. Generic budget.

Q. Were you given this budget quarterly?

A. Yes.

Q. Were the accounts that received the force out allowances offered a choice between stickerings and force out

824 18692

Mr. Countryman/by Ms. Bagley

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allowances?

A. I don't remember.

Q. Were force out allowances offered to every account in your department?

A. I don't know.

Q. Do you recall what your generic budget was for the first quarter of 1985?

A. No, I do not.

Q. Do you recall what it was for the second quarter of 1985?

A. No.

Q. Do you recall what it was for the third quarter of 1985?

A. No.

Q. Was the amount different for each of those three quarters?

A. Yes.

Q. Did the amount of the budget change during any of those quarters?

MR. JAMES: Object to the form.

A. I don't remember.

Q. Who gave you your generic budget?

A. Frank Schoenheiter.

Q. Did Mr. Schoenheiter determine how much that budget would be?

A. I believe he did.

Q. Do you know how he determined how much that budget would be?

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Mr. Countryman/by Ms. Bagley

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A. No, ma'am.

Q. Did you allocate your budget among your key account managers, division managers and sales reps?

A. Yes.

Q. And those decisions were made by you?

A. That's correct.

Q. Mr. Schoenheiter gave you a budget amount and you allocated it among your people?

A. That's correct.

Q. Did you allocate your budget among accounts as well?

A. I'm not sure I understand the question.

Q. Did you just divide your budget into sections for each one of your employees, or did you divide it into amounts that should be spent on accounts regardless of who was responsible for that account?

A. It was done several different ways over the course of the year.

Q. What were those different ways?

A. My memory was that one time it was done on a percentage of the business contribution done by the accounts of each manager, meaning the accounts as a group generated X amount of business, and that was that manager's percent of contribution to the total department business. And the budgets were allocated on percent of business contribution.

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Mr. Countryman/by Ms. Bagley

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Q. When you determined that percent of business contribution, did you only include accounts that already carried Brown & Williamson generic cigarettes?

MR. JAMES: Object to the form.

A. Yeah, I'm not sure I understand that question either.

Q. In adding up the volume accounts -- why don't you repeat again how you determined that budget?

A. I'm not sure that I can repeat it. On one occasion I looked at the total business contribution that was made by the accounts controlled by each of the respective managers.

Q. All right, that's what I was going to ask -- those accounts controlled by each of those respective managers, were those any accounts in their areas, or were they just accounts that carried B&W generics?

A. They were accounts that carried B&W generics.

Q. What were some of the other ways you divided this budget?

A. We looked at the business opportunities by manager as well, which also included customers that didn't carry B&W generics.

Q. Did you use that method of allocating the budget during a separate quarter than the previous method that you've testified about?

A. I believe so, yes.

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Mr. Countryman by Ms. Bagley:

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Q. Do you remember which quarter you allocated it by --

A. I do not.

Q. Business opportunities -- was there any other way that you allocated the budget?

A. I don't believe so.

Q. Did you tell your key account managers and division managers and sales reps what they could use this money for?

A. I'm not sure I understand the question.

Q. Did you tell them that you had allocated a certain portion of the budget to them, did you tell them they could use this money for stickering?

A. Yes.

Q. Did you tell them that they could use it for anything else?

A. Not to my knowledge.

Q. Did any of them ever request from you the permission to use this budget for payments other than stickering?

A. I believe force out allowances, as we've discussed earlier.

Q. That's the only other request that was made?

A. I believe so, yes.

Q. Was there ever a time when the amount of money spent on stickering in your department exceeded your budget amount?

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Mr. Countryman/by Ms. Bagley

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A. I don't believe so.

Q. In order to exceed that budget amount, whose permission would you have had to have received?

A. Frank Schoenheiter.

Q. Did you ever ask Mr. Schoenheiter for permission to make payments to accounts other than stickering?

MR. JAMES: I'll object to the form.

A. I don't remember.

Q. Did your key account managers and division managers report to you on their use of their budgets?

A. Yes, they did.

Q. And was there a certain form that they reported this to you on?

A. No, I don't believe so.

Q. Did they make regular written reports to you on the use of their generic budgets?

A. They reported their usage on a quarterly basis against the budgets that they had been assigned.

Q. Did any of your key account managers or division managers or sales reps exceed their generic budgets on a quarterly basis?

A. I don't remember if they did or not.

Q. Did any of your key account managers or division managers or sales reps fail to spend all their allocated budget in any quarter?

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A. I don't remember.

Q. I'd like to show you a document that's previously been marked as McCormick Exhibit 10, and ask you to look at that?

A. Okay.

Q. Have you seen this document before?

A. I don't believe so.

Q. There's reference in this document to generic budget for first and second quarters, 1985, and there's a budget for department 13 in this document. Is that the generic budget that you received for the first and second quarters of 1985?

A. No, ma'am.

Q. Did you receive a budget of \$16,500 for Food Lion for the first and second quarters of 1985?

A. No.

Q. Did Food Lion receive \$16,500 in stickering in the first and second quarters of 1985?

A. No.

Q. Did Harris-Teeter receive \$16,500 in stickering for the first and second quarters of 1985?

A. No.

Q. Do you know whether or not the budget for department 13 in this document was requested by Mr. McCormick?

MR. JAMES: Object to the form.

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CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

Mr. Countryman/by Ms. Bagley

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A. I'm sorry, I don't understand the question.

Q. Do you know whether Mr. McCormick requested a budget totaling \$44,675 for department 13?

A. No, I've never seen this form before.

Q. Right, but aside from the form, you don't have any knowledge of him requesting --

A. No, I don't know what he did.

Q. Does Mr. McCormick have a separate generic budget for your department?

MR. JAMES: Object to the form.

A. I'm sorry, I don't understand that question either.

Q. You've testified that you received your generic budget from Mr. Schoenheiter?

A. That's correct.

Q. Does Mr. McCormick also have, to your knowledge, a generic budget which he spends in part in department 13?

A. He, to my knowledge, has a budget that he also gets from Frank Schoenheiter. I have no idea what that is.

Q. So he may be spending his budget in the same accounts that your budget is being spent in?

MR. JAMES: Object to the form.

A. I'm not sure I understand that question either.

Q. Does Mr. McCormick offer stickering to accounts in your department?

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Mr. Countryman By Ms. Bagley

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A. Yes.

Q. Has Mr. McCormick paid for stickering for accounts in your department?

A. Not to my knowledge.

Q. He's offered it, but he hasn't paid it?

A. To my knowledge, the amount of stickering that Joe McCormick offers to accounts in my department comes out of my budget.

Q. But you have testified that you think that Mr. McCormick has a separate generic budget?

A. That's correct.

Q. To your knowledge, what is that budget spent on?

A. I have no idea.

Q. But to your knowledge, Mr. McCormick did not provide Food Lion with \$16,500 worth of stickering in the first and second quarters of 1985?

A. No, ma'am, he did not.

Q. To your knowledge, does Mr. McCormick allocate part of his budget to division managers and sales reps in department 13?

A. No, ma'am, not to my knowledge.

Q. Are there any division managers or sales reps in department 13 that report to Mr. McCormick?

A. No, ma'am, there are not.

Q. I'd like to ask the Court Reporter to mark as Countryman

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Mr. Countryman/by Ms. Bagley:

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Exhibit 2 a document bearing Brown & Williamson
production numbers 187420 through 187421. (DOCUMENT SO
MARKED.)

(WHEREUPON, there was held a discussion
off the record which was not reported.)

Q. Have you seen this document before?

A. Apparently I wrote it.

Q. Did you prepare this document in the regular course of
your business?

A. Yes.

Q. At the time that you prepared this document, did you
believe it to be accurate?

A. Yes.

Q. This document talks about generic VPR sticker
allocations, is that correct?

A. That's correct.

Q. Did these allocations come out of your generic budget?

A. Yes.

Q. Which quarter's generic budget included these sticker
allocations?

MR. JAMES: Object to the form.

A. I'm not sure, but it would appear the fourth quarter of
1984.

Q. Did your fourth quarter generic budget include anything
other than the sticker allocations mentioned in this

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Mr. Countryman/ by Ms. Bagley

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document?

A. I don't remember.

Q. So it could have included other things?

A. I don't remember.

Q. According to this document, are key account managers allocated any stickers?

A. No, ma'am.

Q. Do you know whether or not key account managers were allocated any part of your generic budget in the fourth quarter of 1984?

A. No, ma'am.

Q. Do you know whether or not the total 52,100 sticker allocations were actually given to accounts -- I think what I'm really asking you is if anybody ended up being a sticker hoarder?

A. No, I think all of these stickers were expended.

Q. Do you remember why division G had a larger allocation than the other divisions?

A. Yes.

Q. And what was that reason?

A. His accounts are significantly larger.

Q. Does this document refresh your recollection in any way about the approximate amount of your generic budget in any quarter in 1985?

MR. JAMES: In 1985?

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Mr. Countryman by Ms. Bagley

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Q. Yeah.

A. I'm sorry, I don't understand the question.

Q. Well, if we've established that you had at least 52,100 dollars in 1984, do you know whether or not the first quarter of 1985 would have had about the same amount, or a little bit more?

A. I believe the first quarter of 1985 was somewhat greater.

Q. Can you just approximate for me what that budget might have been?

A. No, not really, because I don't remember.

Q. Could it have been more than \$100,000?

A. I don't think so, but again, I don't remember. I believe it was less than.

Q. Less than \$100,000?

A. Yes, ma'am, but I don't remember for sure.

Q. Do you know whether or not your budget for the second quarter of 1985 was smaller than or larger than your budget for the first quarter of 1985?

A. Again, I don't remember.

Q. I'd like to show you a document that's been previously marked as Dant Exhibit 102, and ask you to look at it?

A. Okay.

Q. Have you seen this document before?

A. Yes.

Q. Did you receive this document in the regular course of

824 18702

Mr. Countryman/By Ms. Bagley

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your business?

A. Yes.

Q. Did you receive this document on or about February 14th, 1985?

A. Yes.

Q. Did you follow the procedures outlined in this document in your department?

A. Basically, yes.

Q. Did you follow these procedures before you received this document or just afterwards?

A. Procedures according to this document were followed after the document was received.

Q. So the sales reps in your department maintained their generic dollar inventories on form SA-2919?

A. Yes.

Q. Do you have a file that contains those forms?

A. No, ma'am.

Q. Who does?

A. I'm not sure anyone does now.

Q. The sales reps were to submit these forms to their division managers, is that correct?

A. Yes.

Q. And then what was the division manager supposed to do?

A. Well, those forms are not retained for an extended period of time, so he would keep them for a period of

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Mr. Countryman, by Ms. Bagley

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time and then they'd be disposed of, I would imagine.

Q. I'd just like to know, David, that as far as I know, we have not seen any of these forms. And that I would think that they would be called for, and I would ask that you would check and see whether they have been produced?

MR. JAMES: Okay, we've discussed this before --

Q. Oh, yeah, I understand it. I just want to get all these on the record.

MR. JAMES: Yes.

(WHEREUPON, there was held a conversation off the record which was not reported.)

Q. According to paragraph number seven on the second page of this document, the division manager "compiles this information from completed form SA-2919." Does the division manager in your department compile that information into a written report?

A. No.

Q. If I can ask you to turn your attention briefly to Countryman Exhibit 2, do you recall how you allocated the sticker budget among your division managers?

A. At this point in time?

Q. Yes.

A. No, ma'am, I don't remember how I did it.

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Mr. Countryman/by Ms. Bagley

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Q. I'd like to direct your attention to the numbered paragraph one, "Out of this allocation enough stickers should be set aside to cover 12 stickers per Eckerd Drug outlet per assignment." What does that refer to?

A. Apparently, an agreement had been reached through Eckerd's office that twelve cartons of cigarettes per store was going to be stickered. Their office is outside the control of this department, so this indicates to the division managers that they should advise the reps that they should retain twelve stickers for each of the stores for which they had call responsibility. So that when they got there, they could put the stickers on, rather than using them in other accounts and then not being able to comply with Eckerd's program.

Q. Do you know who at Brown & Williamson offered this program to Eckerd, or agreed to this program with Eckerd?

A. No, ma'am, I don't.

Q. Do you recall attending a meeting in May, 1985, of the department managers in the southeast region?

A. No, I don't remember attending it.

Q. Let me show you a document that's been previously marked as Schoenheiter Exhibit 8, and ask you to look at that?

A. Okay.

Q. Have you seen this document before?

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CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

Mr. Countryman/by Ms. Bagley

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A. Yes.

Q. Do you remember when you saw it?

A. On or about May 8th, 1985.

Q. Did you receive this document in the regular course of your business?

A. Yes.

Q. Did you receive this document at a meeting you attended?

A. I believe I did.

Q. Do you recall who else was present at that meeting?

A. I believe the department managers and the regional generic manager for the southeast and Frank Schoenheiter.

Q. By the regional generic manager for the southeast, are you referring to Mr. McCormick?

A. That's correct.

Q. Directing your attention to page eleven of this document?

A. Eleven -- okay.

Q. There's reference to an allocation for May, June and July of 1985 for Charlotte of \$115,000, is that correct?

A. That's correct.

Q. Did you receive as the Charlotte department manager an allocation of \$115,000?

A. Yes, ma'am.

Q. And what was that allocation for?

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CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

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Mr. Countryman/by Ms. Bagley

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A. Generic stickering or generic promotion.

Q. Is May, June and July a quarter?

A. No.

Q. Was this unusual that -- had you had a generic budget for the second quarter of 1985?

A. No.

Q. Did you have a generic budget for the first quarter of 1985?

A. Yes.

Q. Did you have any generic budget for April of 1985?

A. I don't believe so.

Q. Do you know the reason for that?

A. Simply because it was superseded by this program for May, June and July.

Q. So during April, '85, was any stickering done in your department?

A. Not to my knowledge.

Q. Do you recall how you allocated this \$115,000 for May, June and July of 1985?

A. No, ma'am.

Q. Was the entire \$115,000 allocated to the Charlotte department spent during May, June and July of 1985?

A. Yes.

Q. Were there any expenditures for stickering or other generic promotions in the Charlotte department during

824 18707

Mr. Countryman/by Ms. Bayley

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May, June and July of 1985 that exceeded the \$115,000?

A. Not to my knowledge.

Q. I'd like to direct your attention now to page five of Schoenheiter Exhibit 8?

A. Okay.

Q. Do you see that handwritten notation at the top of that page, "not to be duplicated, verbal communications only"?

A. Yes, ma'am.

Q. What did you understand that handwritten notation to refer to?

A. Not to be duplicated, that it was to be communicated verbally only.

Q. All the information on this page?

A. Yes.

Q. Did you have an understanding of why the information on this page was not to be duplicated?

A. I have a personal opinion.

Q. And what's that?

A. So that it would be difficult for our competitors to monitor what we were doing.

Q. Directing your attention to the chart on this page headed "Brown & Williamson's Blended Branded Filter and Filter ST Labels Rebate Per Carton." Was any account presented with this rebate chart in written form?

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Mr. Countryman by Ms. Bagley

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A. I don't know.

Q. Were you told at this meeting not to present that rebate chart in written form to your accounts?

A. I believe so.

Q. Do you recall who told you that at that meeting?

A. I think Frank Schoenheiter.

Q. Do you know whose handwriting this is here?

A. No, I don't.

Q. Was there any discussion at this meeting about the reason that Brown & Williamson had added two super brackets to their generic rebate program?

MR. JAMES: Object to the form.

A. I don't remember.

Q. Is there any account on your department that falls into the rebate bracket that requires quarterly purchases of 8,000 cases?

A. No, ma'am.

Q. Are there any customers in your department that fall into the rebate bracket that requires purchases of 1,500 through 7,999 cases per quarter?

A. There may be.

Q. Can you name any account that does fall into that category?

A. Speculating only, Merchants Distributing, Incorporated. Possibly Thomas & Howard, Newton.

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Q. To your knowledge, during the entire period that Brown & Williamson has sold generic cigarettes, has any account in your department sold more than 8,000 cases per quarter?

A. No, ma'am.

Q. Do you have any understanding of the reason that no account has sold more than 8,000 cases per quarter?

MR. JAMES: Object to the form.

A. No, I don't understand why they haven't unless it's that they just don't have the customer base that could buy that many.

Q. I'm directing your attention to page -- it appears to be 5A of this document -- it's the next page?

A. Okay.

Q. Do you recall a discussion of the direct account incentive program at this meeting?

MR. JAMES: I object to the form.

A. No, I don't remember a discussion about it.

Q. Do you recall Mr. McCormick demonstrating at this meeting a generic presentation which includes a presentation of DAIP?

MR. JAMES: Object to the form.

A. No, I don't remember.

Q. Do you recall Mr. McCormick making any statement at this meeting relating to how DAIP should be used in generic

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FORM OR 3-55 IN PUBLISHED BY THE MINN. JUD. COUNCIL

Mr. Countryman/by Ms. Bayley

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presentations?

MR. JAMES: Object to the form.

A. No, because I don't remember him making any presentation.

Q. Do you recall anybody at this meeting discussing how DAIP should be used in generic presentations?

MR. JAMES: Object to the form.

A. No, I said I don't remember it being discussed at the meeting.

Q. Did you instruct your key account managers, division managers and sales reps on how to use DAIP in generic presentations?

A. Yes.

Q. What did you instruct them?

A. To use it in such a way that the customers understood that it was a requirement for them to stock Brown & Williamson generics in order to qualify for the program.

Q. Directing your attention to the underlined portion of page 5A, it says, "The direct account incentive program is retroactive to January 1st, 1985. This information was not communicated to your customers. We felt it would be better for you to do so." Did you instruct your key account managers, division managers and sales reps to tell accounts that if they ordered generics, they would receive retroactive DAIP payments?

A. Assuming that that account met all of the qualification

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Mr. Countryman/by Ms. Bagley

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criteria for the direct account incentive program, yes.

(WHEREUPON, there was held a discussion

off the record which was not reported.)

Q. Directing your attention now to page seven of Schoenheiter Exhibit 8. Were accounts in your department offered the generic incremental sales program during the period May 1st, 1985, through July 31st, 1985?

A. To the best of my knowledge, they were.

Q. To your knowledge, was every account in your department offered this program?

A. To the best of my knowledge, they were.

Q. Directing your attention now to page eight of this exhibit, under the heading "Retail Program;" and also, that's continued on page nine. The third paragraph down, this document states how to determine the maximum allowable spending in any store for the generic retail promotion. Was the maximum allowable spending in accounts in your department calculated in this way?

A. To the best of my knowledge, it was, yes.

Q. So to the best of your knowledge, each account in your department was offered \$1 per carton for each carton of its weekly black and white volume?

A. I'm sorry, I don't understand that question.

Q. What was your understanding of how to calculate the

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CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

Mr. Countryman/by Ms. Bagley

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maximum allowable spending based on this document?

A. My understanding was that we could pay -- or to calculate the spending based on a customer's purchases, one week's average movement, over a recurring three-month period, one week of each of the three different months.

Q. And offers were made to accounts in your department based on that calculation?

A. To the best of my knowledge, yes, ma'am.

Q. Was your understanding that this was the maximum allowable spending for the May, June and July generic retail program⁹ for those entire three-month periods, or per month?

A. I'm sorry, I'm not sure I understand the question.

Q. Well, you've testified⁹ that you determined an average one-week volume, was that the maximum allowable spending for the generic program that's being discussed in this document for the entire three-month program?

MR. JAMES: What is it, three months as opposed to one month, or some other time period --

Q. Right, or could you give an account stickers equal to one month's average movement each month, or only one time during the period that this promotion ran?

A. My understanding was one week out of each of the three months.

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Mr. Countryman/ by Ms. Bagley

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Q. So that the maximum allowable spending was three times the average one-week movement?

A. Yes.

Q. In the final paragraph of this page, it says, "Additional generic funds in addition to previously allocated sticker monies will be assigned to you by your manager." For the Charlotte department, were any funds allocated besides the \$115,000 that you've previously testified about for May, June and July, 1985?

A. Not to my knowledge.

Q. Did any of the sales reps or division managers in the Charlotte department during this period have any other sticker monies left over from previous budgets that they could spend --

A. I don't remember.

Q. This is a good time for a break. Everybody looks like they need one.

(WHEREUPON, there was held a five minute recess at this time.)

Q. Mr. Countryman, you testified that some accounts were paid a force out payment out of your generic budget, is that correct?

A. Yes, I believe I said that.

Q. Was every account in your department offered a choice

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Mr. Countryman/by Ms. Bagley

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between a force out payment or stickering?

MR. JAMES: I think that's been asked

and answered earlier.

A. Yeah, I believe it has.

Q. Well, let's try -- can we just --

A. Go ahead and ask the question again, I'm sorry.

Q. I don't think I did ask this question. Was every
account in your department offered a choice between a
force out payment and stickering?

A. I don't know.

MR. JAMES: That's the answer I recall.

Q. I'd like to ask the Court Reporter to mark as
Countryman Exhibit 3 a document bearing Brown & Williamson
production number 155237. (DOCUMENT SO MARKED.) Have
you seen this document before?

A. Yes, ma'am.

Q. Did you write this document?

A. Yes, ma'am.

Q. Did you prepare this document in the regular course of
your business?

A. Yes, ma'am.

Q. At the time that you prepared this document, did you
believe it to be accurate?

A. Yes, ma'am.

Q. This document describes the generic program allocations

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Mr. Countryman, by Ms. Bagley

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for your department, is that correct?

A. That is correct.

Q. Could you tell me what 13T refers to?

A. It's the key accounts manager in Raleigh, North Carolina.

Q. What's his name?

A. Kathy Parker.

Q. And does 13U also refer to a key accounts manager?

A. Yes.

Q. And who is that?

A. Janson Booth.

Q. And 13V?

A. At this point in time, it was Karl Legreca.

Q. Legreca?

A. Legreca.

Q. Also a key accounts manager?

A. Yes, ma'am.

Q. And 13W?

A. Adam Smith.

Q. And 13X?

A. Melissa Webb.

Q. Were your division managers and sales reps allocated any money out of the \$115,000 budget for May, June and July, 1985?

A. I don't believe so.

Q. Do you recall how you allocated the \$115,000 among your

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Mr. Countryman by Ms. Bagley

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key account managers and I-95?

A. I'm not sure, but I believe it was based on B&W generic volume contribution.

Q. In the third paragraph, it says, "All funds remaining from each Key Account Manager where commitments have not been made will be turned back to the sales reps and implemented at retail." Did that actually happen?

A. I believe there was some money that was not expended by the key accounts managers and it was then used by the sales reps, yes.

Q. What do you mean by implemented at retail in this document?

A. Show me where you're looking at, and I'll --

Q. It's part of that sentence there.

A. Okay, that meant that any funds that were not expended would be reallocated to the sales reps and they, in turn, would offer those funds to retail stores that they called on.

Q. Would key account managers offer their sticker allocations to retail stores that they called on?

A. They would offer them to the customers that they called on, the buying offices.

Q. There's a reference in the second paragraph of this document to \$13,000 "from the original generic VPP program." Do you know what that refers to?

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A. I believe that that was funds that were not totally expended from the first quarter generic budget allocation.

Q. Does this refresh your recollection at all what amount your first quarter --

A. No, ma'am, it does not.

Q. First quarter generic promotion budget was? Was the entire \$128,000, which is the \$115,000 plus the \$13,000, spent in May, June and July of 1985?

A. To the best of my knowledge it was, yes.

Q. In the final paragraph, you state that, "I will expect a total cost itemization, by account, for commitments obtained prior to May 31st in the Charlotte Department office by June 5, 1985." Did you receive such a cost itemization from each account manager?

A. I don't remember if I did or not.

Q. Do you remember if you received it from any key account manager?

A. Honestly, no.

Q. There's a reference to a \$10,000 allocation for I-95, could you explain what that is?

A. That's an allocation that was designed to be used for the accounts that are in what we refer to as our I-95 program. It's approximately 45 retail accounts that are situated directly along I-95. They're high-volume

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EXHIBIT 105 REPORTER PAGE 105 105 626 641

Mr. Countryman/by Ms. Bagley

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cigarette outlets.

Q. Is any particular key account manager responsible for those accounts?

A. No, he is not, or, no, they are not.

Q. I'd like to ask the Court Reporter to mark as Countryman Exhibit Number 4 a document bearing B&W production number 69605. (DOCUMENT SO MARKED.)

Have you ever seen this document before?

A. No, ma'am, I never have.

Q. Does this document refresh your recollection about any presentation made at the May 8 southeast area meeting concerning the proper way to present a DAIP generic presentation?

A. Not really.

Q. Do you recall completing an individual copy of the DAIP generic presentation at this meeting?

A. No, ma'am, I did not.

Q. Do you recall anybody doing that at this meeting?

MR. JAMES: Object to the form.

A. I remember only very vaguely that some managers completed some form.

Q. Do you know what Mr. McCormick is referring to when he says, "We used our DAIP generic presentation as a guide"?

A. No, not really.

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CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

Mr. Countryman/By Ms. Bagley

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Q. Do you have any idea of what he might be referring to?

A. No, ma'am.

Q. I'm going to ask you to look at Countryman Exhibit 3 again. You testified that your entire \$115,000 budget had been allocated to the key account managers and to I-95, is that correct?

A. That's correct.

Q. Were any accounts in your department that were not called on by key account managers offered stickering during this period?

MR. JAMES: I'm sorry, could you repeat that?

Q. Were any accounts in your department that were not called on by key account managers offered stickering during the period of May, June and July of 1985?

A. I believe other accounts beyond those called on by KAM's were offered stickers, yes.

Q. Who offered those stickers to those accounts?

A. I believe the sales reps that I earlier said got the excess of these funds.

Q. There were excess funds after May 31st, 1985, is that correct?

A. There were excess funds -- you had asked me if all of the funds were expended. My answer to that was I believe that there were funds not expended by key account managers that, in turn, were given to sales reps. And they, in

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turn, used those funds to sticker accounts not called on by key accounts managers.

Q. So during May, June and July of 1985, in your department, stickering was offered to accounts called on by key account managers, to I-95 accounts, and to retail accounts called on by sales reps?

A. That's correct.

Q. And to no one else?

A. Not to my knowledge.

Q. There's also a reference in the third paragraph, it says, "KAM's will solicit and gain commitments for targeted programs by May 31, 1985." What does targeted programs refer to?

A. I think this refers to the accounts for which they are responsible, to gain commitments from those accounts to participate in this program.

Q. Do you know how many accounts in your department are called on by key account managers?

A. Not offhand, no.

Q. Can you approximate the number of accounts?

A. I would say approximately 20 to 25 per key accounts manager.

Q. So between 100 and 125 all together in the department?

A. That's probably reasonable, yes.

Q. And how many accounts are there in your department in

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CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

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total?

A. I think it needs to be differentiated between the types of accounts, because there are approximately 17,000 retail stores. Some of those retail stores are retailers that are part of a chain organization and that only constitutes one account even though it may constitute as many as 350 or 450 retail stores.

Q. Using that definition of account, do you have an approximation of how many accounts there are in your department in total?

A. I would guess and say somewhere between 500 and 1,000 -- I don't know.

(WHEREUPON, there was held a discussion off the record which was not reported.)

Q. I'd like to ask the Court Reporter to mark as Countryman Exhibit 5 a document that bears B&W production number 69521. (DOCUMENT SO MARKED.) Have you ever seen this document before?

A. No, ma'am, I never have.

Q. On the fourth line down, Mr. McCormick states in this document that he "made the first six (6) months D.A.I.P. payment a 'bonus,' which it is." Do you have an understanding of what he meant by that?

A. No.

Q. Did you ever tell an account that a DAIP payment was a

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bonus?

A. No, ma'am.

Q. Do you know whether anybody in your department did that?

A. I feel confident they did not.

Q. In your department, was any account given a Brown & Williamson franchise with respect to generic cigarettes?

A. Would you explain what you mean by franchise?

Q. Well, actually, why don't I ask you what your understanding of B&W's franchise program is?

A. At the time we initiated Brown & Williamson's generics in June of 1984, we had four labels, four brand families, previously noted filter ST's, blended, branded and filter. Three of those four styles were to be offered to the three highest volume customers in the department, or to be offered to those customers where Liggett already had their franchised label.

Q. Did you offer accounts in your department franchises?

A. I did not offer any franchises myself. The products that were destined or designed to be franchise products were in fact offered to three wholesalers in the state of North Carolina, yes.

Q. Which wholesalers were those?

A. SouthCo Distributing; Central Wholesalers in Burlington, North Carolina; and the Atlantic Branch facilities of Old Dominion Tobacco Company out of Richmond, Virginia.

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Mr. Countryman/by Ms. Bagley

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- Q. Who did offer these accounts of B&W franchise programs, if you know?
- A. The managers responsible for those individual customers.
- Q. So for SouthCo Distributing, who made the offer?
- A. I believe at the time it was probably Rex Walker.
- Q. And his title is?
- A. Division manager.
- Q. And for Central Wholesale?
- A. I believe at the time it was Darryle Hopkins.
- Q. And he's a division manager also?
- A. Yes, ma'am.
- Q. And the Atlantic Tobacco?
- A. It was presented at their home office in Richmond, Virginia.
- Q. Do you know by whom?
- A. I believe Earl Tatum.
- Q. Do each of these accounts still have a B&W franchise?
- A. No, ma'am.
- Q. Do any of them still have a B&W franchise?
- A. Not to my knowledge.
- Q. Okay, why don't they any longer?
- A. We ceased to produce those cigarettes in July of 1985.
- Q. Did each of these accounts have a franchise until July of 1985?
- A. I believe they did, yes.

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Mr. Countryman/by Ms. Bagley

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Q. What advantages does an account receive by having a franchise?

MR. JAMES: Object to the form?

A. You'll have to clarify that statement to me, please?

Q. Do franchise accounts receive extra payments from B&W?

A. No, ma'am.

Q. They receive the same payments as they would if they did not have a franchise brand?

A. That's correct.

Q. Do franchise accounts have the exclusive right to sell that brand of cigarette in a certain area?

A. Yes, they do.

Q. Which franchise brand did SouthCo have?

A. I believe they had the label Branded.

Q. All right, in which area did they have the exclusive right to sell branded?

A. They had the right to sell it to any -- not a geographical area, but any customer that they serviced, regardless of where that customer was located.

Q. Which brand did Central Wholesale have?

A. They had the label that was just titled Filter.

Q. And they also had the right to sell it exclusively to any customer they sold to?

A. That's correct.

Q. And which brand did Atlantic Tobacco --

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Mr. Countryman/by Ms. Bagley

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3 A. It's called Blended.

4 Q. And what were their exclusive rights?

5 A. The same as everybody else.

6 Q. Does a franchise account have to perform any extra
7 duties?

8 A. No, ma'am.

9 Q. Was there a problem in your department with generic
10 out of stocks?

11 MR. JAMES: Object to the form.

12 A. I'm not sure I understand the question.

13 Q. Do you have an understanding of the term "out of stock"?

14 A. To me it means that the product is not available to be
15 purchased by the consumer.

16 Q. Did you ever have a problem in your department where a
17 customer had ordered generic cigarettes and Brown &
18 Williamson was unable to supply those cigarettes at the
19 time they were ordered?

20 A. Numerous occasions.

21 Q. Did you ever lose a generic customer because of generic
22 out of stock problems?

23 A. Not to my knowledge.

24 Q. Do you recall any particular customer that complained
25 about generic out of stock problems?

A. I think it's fair to say that any customer that doesn't
get what they order complains.

824 18726

CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

FORM 001-105 RE-PRINTED BY PAPER & MORE CO. 800 626 6311

Mr. Countryman/By Ms. Bagley

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Q. So what I'm trying to ask you is which customers in your department didn't get what they ordered on occasion?

A. I think it's a very open-ended question, and I'm sure that there have been occasions where it's very likely all of the 143 direct accounts may have experienced some out of stock situations.

Q. Did you ever discuss the out of stock problems in your department with anybody at Brown & Williamson?

A. Yes.

Q. Who did you discuss that problem with?

A. I discussed them with the people in our generic sales department, the people in our traffic department.

Q. Which people in the generic sales department did you discuss this with?

A. I believe at the time Harvey Kerr was the generic national sales manager, and Tony Ferguson is the director of transportation.

Q. What did you say to Mr. Kerr about the generic out of stock problem?

A. I'm not sure that I could state explicitly what I discussed with him other than to say that when a customer doesn't get what they order, they get unhappy.

Q. Was the generic out of stock problem in your department confined to a certain time period, or when was this

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CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

FORM OF 325, REPORTERS PAPERS, INC., CO. 800.625.6111

Mr. Countryman/by Ms. Bagley

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problem?

A. I would say, honestly, that we've experienced out of stock problems -- or we always have occasion to experience out of stock problems, not only on generics, but other product styles as well.

Q. Have you discussed your out of stock problems on other brand styles with Mr. Kerr, or anybody at the B&W Louisville office?

A. Yes, ma'am.

Q. Did you ever compile a list of customers in your department that were to be protected from generic out of stocks?

A. No, ma'am.

Q. Did anyone ever ask you to compile such a list?

A. Not to my knowledge.

Q. Were you aware of the fact that any such list existed?

A. No, ma'am.

Q. What did Mr. Kerr say in discussions in which you told him that there was a generic out of stock problem in your department?

A. I'm not sure, again, that I can relate his exact responses, but I think it's fair to say that he told me that as soon as they got 'em made, they'd ship 'em.

Q. How many times do you recall discussing the generic out of stock problem with Mr. Kerr?

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Mr. Countryman/by Ms. Bagley

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A. I really couldn't answer that because I don't remember how many times I've discussed it with him.

Q. Would you say more than ten?

A. I don't remember.

Q. I'd like to show you a document that's been previously marked as Dant Exhibit Number 82, and ask you to look at that. Have you ever seen this document before?

A. No, ma'am.

Q. Are any of the customers on this list in your department?

A. No, ma'am.

Q. Does this document refresh your recollection about whether or not you've ever heard of a list of customers to be protected from generic out of stocks?

A. No, ma'am.

Q. You still don't remember?

A. No, I sure don't.

Q. Was there a problem in your department with respect to generic cigarettes that were outdated?

MR. JAMES: Object to the form.

A. I'm not sure I understand that question either.

Q. Do B&W generic cigarettes contain -- on the package is there a code date?

A. Yes, they do.

Q. And what does that code date mean?

A. It means that -- the code indicates the date of

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CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

FORM OR 325 REORDER, PAPER & MISC. CO. 800 626 6712

Mr. Countryman/by Ms. Bagley

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manufacture, the month and the year that a product was manufactured.

Q. Do you have an opinion as to how long after the month of manufacture cigarettes can be sold?

MR. JAMES: Object to the form.

A. Yeah, I have several opinions regarding that issue.

Q. Okay, what are those opinions?

A. I think, to say it in general terms, I feel confident that cigarettes that have a dating of less than a year should be considered saleable and not present any problem to the consumer that purchases them. But that can be affected dramatically by the conditions under which the cigarettes are stored, the climate in which they're sold, so there are a lot of factors that have an impact on the saleability of cigarettes. And code dating isn't necessarily the only criteria.

Q. Did any customers in your department ever complain that they'd been given B&W generic cigarettes that were older than they thought they ought to be?

MR. JAMES: Object to the form.

A. Yes, there have been customers that complained about dates.

Q. Do you recall any specific customer that made that complaint?

A. Yeah, Market Distributing, Incorporated, MDI, Hickory,

824 18730

Mr. Countryman/By Ms. Bagley

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North Carolina.

Q. And somebody from MDI spoke to you about --

A. Yes, not to me, through my key accounts manager that has call responsibility.

Q. And can you just describe what the situation was?

A. Yeah, they received product of a dating that was older than product that they had already received, and the reason for that was that stock had been moved from an alternate B&W warehouse into that facility to support their request for product.

Q. Do you recall how old that product was when they received it?

A. No, ma'am, I do not.

Q. Their complaint was that it was older than product they already had?

A. Yes, ma'am.

Q. Did you do anything to remedy that situation?

MR. JAMES: Object to the form.

A. Not physically.

Q. Did you do anything in response to their complaint?

A. Said, "Gee, I'm sorry."

Q. What did you mean when you said, "Not physically"?

A. We didn't remove the product or move it or replace it.

Q. Do you recall any accounts other than MDI complaining about old product?

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Mr. Countryman, by Ms. Bagley

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A. Not off the top of my head, no.

Q. But there may have been others?

MR. JAMES: Object to the form.

A. I'm not sure that there were.

Q. Did you ever lose a customer because of old product?

A. Not to my knowledge.

Q. Does MDI still buy cigarettes from Brown & Williamson?

A. Yes, they do.

Q. I'd like to ask the Court Reporter to mark as Countryman Exhibit 6 a document bearing Brown & Williamson production number 124301. (DOCUMENT SO MARKED.) Have you seen this document before?

A. Yes, ma'am.

Q. Did you write this document?

A. Yes, ma'am.

Q. Did you prepare this document in the regular course of your business?

A. Yes, ma'am.

Q. At the time you prepared it, did you believe it to be accurate?

A. Yes, ma'am.

Q. At the time that you wrote this document, Thomas & Howard was carrying Brown & Williamson generics, correct?

A. Yes, they were.

Q. Was Thomas & Howard also carrying Liggett generics?

824 18732

Mr. Countryman/ by Ms. Bagley

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A. I believe one of their branches was, possibly two.

Q. And you understood that Liggett had made an offer to at least one consortium member of Thomas & Howard of a total of 79.7 cents, is that correct?

A. Yes, that is.

Q. And in the first paragraph, you're saying that Thomas & Howard Corporate had been offered Liggett's highest rebate volume category, is that correct?

MR. JAMES: The document speaks for itself.

Q. Well, I'm trying to understand the document.

MR. JAMES: You can answer.

A. Yes.

Q. Did you have an understanding of what -- first of all, when you refer to the competitors, did you mean Liggett & Myers?

A. Yes, I did.

Q. Did you have an understanding of what their highest rebate volume category -- what rebate number that was?

A. At the time, based on their published offer, the figure that I was quoted by Mr. Tom DeWitt was higher than any published offer they had at the time.

Q. And what was that figure, if you remember?

A. I don't remember what the published offer was at the time.

Q. And you don't remember what Mr. DeWitt told you?

B24 18733

Mr. Countryman by Ms. Bagley

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A. Yes, I do. It's 79 -- 76. -- no, he didn't quote me a figure. I beg your pardon.

Q. That's what I was trying to understand. He just told you that he was in their highest category?

A. That's correct.

Q. At this time, was Thomas & Howard in Brown & Williamson's highest volume category?

A. No, they were not.

Q. At this time, was Thomas & Howard Company a member of the Thomas & Howard consortium?

A. Yes, they were.

Q. Did Brown & Williamson make any offer to Thomas & Howard in response to the Liggett offer?

A. Maybe you could further clarify that question.

Q. Did Brown & Williamson make an offer to Thomas & Howard Company's corporate office in response to the fact that Liggett had made an offer placing Thomas & Howard in its highest rebate volume category?

MR. JAMES: Object to the form.

A. We contacted them and advised them that they were currently being paid in a bracket based on their volume in our published offer, and that's what we were going to pay them.

Q. So you did not increase your offer to Thomas & Howard in response to Liggett's offer?

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Mr. Countryman/by Ms. Bagley

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A. No, ma'am, we did not.

Q. Do you know what the Brown & Williamson rebate payment was for accounts that fell within 1,500 and 8,000 cases quarterly, during this time period?

A. No, I don't remember offhand.

Q. Do you remember what the total per carton payment was to Thomas & Howard by Brown & Williamson?

A. It was whatever the published offer was at the time, and I don't remember that offer.

Q. Did Thomas & Howard receive any stickering from Brown & Williamson during the first quarter of 1985?

A. I don't remember.

Q. Do you remember whether Thomas & Howard received any force out payments during the first quarter of 1985?

A. Thomas & Howard is a direct account and would not receive force out payments.

Q. After the time that you wrote this document, did Thomas & Howard replace the Brown & Williamson product line with that of Liggett & Myers?

A. No, they did not.

Q. The Court Reporter has marked as Countryman Exhibit 7 a document which bears Brown & Williamson production number 187413. I ask you to look at that document?

A. Okay.

Q. Have you seen this document before?

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CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

FORM OR 125 REPUTED BY B&W MFG. CO. 800 626 6413

Mr. Countryman/By Ms. Bagley

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A. Yes, ma'am.

Q. Did you receive this document in the regular course of your business?

A. Yes.

Q. Do you have an understanding of why MDI reduced the wholesale price of Brown & Williamson generics by 50 cents per carton?

A. I can only speculate.

Q. What would that be?

MR. JAMES: Well, he doesn't have to speculate.

A. No, I don't know why they did it.

Q. This document states that Gary Tobacco has brought their generics into MDI through a secondary supplier, what does that refer to?

A. This particular account currently stocks, or during this period of time, stocked Brown & Williamson generic cigarettes exclusively. And Liggett & Myers reps calling on customers serviced by MDI were making every attempt to get the retailers being serviced by MDI to buy their products from an alternative source of supply in order that their products would be made available to the retailers.

Q. Do you have an understanding of why MDI did not carry Liggett generics if it had retailers who wanted to

824 18736

Mr. Countryman/by Ms. Bagley

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purchase Liggett generics from them?

MR. JAMES: Object to the form.

A. It was communicated to my key accounts manager that Brown & Williamson had the most profitable program for MDI, and it was their decision to stock Brown & Williamson generics.

Q. Do you know what Mr. Smith meant when he said, "shut the door on Gary" in this document?

A. No, I have no idea.

Q. Did you have an understanding at that time when you read the document?

A. No, ma'am.

Q. How long did this price reduction actually continue, if you recall?

A. It continued during this entire time period through August 31st, 1985.

Q. Do you know whether or not the retail accounts serviced by MDI have stopped requesting Gary generics from a secondary supplier as a result of this price decrease?

A. I have no idea what the retailers that are serviced by MDI are doing. They're continuing to buy B&W generics through MDI. And if they buy other products from other sources of supply, that's their choice.

Q. Did you instruct your division managers and sales reps to call on the retail accounts serviced by MDI during

824 18737

CONFIDENTIAL MINNESOTA TOBACCO LITIGATION
FORM OR 025 RE DOTTED PAGE 6 MFG 111 R00 625 611

Mr. Countryman/By Ms. Bagley

125.

this time period to inform those accounts of MDI's price reduction?

MR. JAMES: I'm sorry, could you repeat that?

A. Yeah.

Q. I'll ask her to read that one.

(WHEREUPON, the question appearing on page 124, lines 24 and 25, and page 125, lines 1 and 2, was read back by the Court Reporter.)

A. I think this letter informs them of that fact.

Q. You didn't verbally instruct them?

A. No, ma'am.

Q. Did your division managers and sales reps report to you on whether or not they had, in fact, contacted these retail accounts?

A. Not specifically, no.

Q. We've had marked as Countryman Exhibit 8 a document bearing the B&W production numbers 187411 through 187412. Have you seen this document before?

A. Yes.

Q. Did you write this document?

A. Yes.

Q. Did you prepare this document in the regular course of your business?

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Mr. Countryman, by Ms. Bagley.

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A. Yes.

Q. Did you believe that this document was accurate when you prepared it?

A. Yes.

Q. Do you recall the test conducted by Eckerd Drug that's referred to in this document?

A. I remember that a test was conducted, but it was conducted out of their buying office in Clearwater, Florida.

Q. Do you know what the results of this test were?

A. No, ma'am.

Q. Were you ever informed by anyone?

A. No, ma'am.

Q. Do you know what generic cigarettes Eckerd stocks today?

A. I know which they stock in the Carolina Division.

Q. And what is that?

A. They stock Brown & Williamson.

Q. When did they begin carrying Brown & Williamson generics?

A. I would expect on or around November 12, 1984, but I'm speculating.

Q. So, to your knowledge, Eckerd began stocking Brown & Williamson generics as a test on or around November 12, 1984, and continued to stock Brown & Williamson generics?

A. In the Carolina Division.

Q. Okay. Which style of Brown & Williamson generics do

824 18739

Mr. Countryman/by Ms. Bagley

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Eckerd's stock -- the Carolina Division of Eckerd's stock?

A. They stocked during this period of time Filter ST's.

Q. Did that continue?

A. Until when?

Q. Well, did they change the style of generics that they carried, at any point?

A. Not during this period of time that we're discussing.

Q. I'm discussing up till August 31st, 1985?

A. No, they did not.

Q. If I can direct your attention to page two of this document, when you say "This is not a paid display authorized by Eckerd," could you explain to me what you meant by that?

A. Yes.

Q. What was that?

A. It's a display that we have in our repertoire of displays that we used to display the stickered product during this period of time.

Q. Was any payment made to Eckerd in connection with this display?

A. No, not to my knowledge.

Q. We've had marked as Countryman Exhibit 9 a document bearing Brown & Williamson production number 69557, which I ask you to look at?

824 18740

CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

Mr. Countryman/by Ms. Bagley

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A. Okay.

Q. Have you ever seen this document before?

A. Yes.

Q. Did you see it on or about January 14, 1985?

A. I don't remember.

Q. Did you receive this document in the regular course of your business?

A. No.

Q. How did you receive this document?

A. I didn't receive it, I've seen it.

Q. Where have you seen this document?

A. Joe McCormick, it was directed at him.

Q. I note that your name is under the cc list, you didn't receive a copy of this?

A. Not to my knowledge, because some of my mail doesn't always get to me.

Q. So did Mr. McCormick show you this letter?

A. Yes.

Q. What were the circumstances under which he showed you this letter?

A. Just that we were congratulating each other in being successful.

Q. In being successful in the introduction of --

A. Generic cigarettes to Mack Stores.

Q. What did Mr. McCormick do to assist that introduction?

824 18741

Mr. Countryman by Ms. Bagley

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A. I don't know, I wasn't present.

Q. You weren't present at what?

A. At the presentation.

Q. Who was present at the presentation?

A. Janson Booth, Preston Lollis, and Joe McCormick.

Q. Did anybody ever tell you what Mr. McCormick had done to assist the generic presentation?

A. Not really.

Q. What do you mean by not really?

A. No, they didn't tell me what he did.

Q. Did Mack's Discount carry Liggett generics before B&W generics were introduced?

A. Yes, they did.

Q. When B&W generics were accepted by Mack's Discount, did they discontinue Liggett generics, to your knowledge?

A. No, they did not.

Q. Does Mack's Discount carry both B&W and Liggett generics today?

A. Is that an appropriate question?

MR. JAMES: We'll make it through

August 31st, 1985 --

Q. All right, did they carry both on August 31st, 1985?

A. I believe they did.

Q. Do you know what offer was made to Mack's Discount by Brown & Williamson?

824 18742

Mr. Countryman/by Ms. Bagley

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A. The published offer that was in place at the time.

Q. Do you know whether Mack's Discount was offered stickering?

A. Yes, they were.

Q. In this initial presentation?

A. That I don't remember.

Q. Do you know how much stickering Mack's Discount received in the first quarter of 1985?

A. No, ma'am, I do not.

Q. Did Mr. McCormick say anything while you were congratulating each other on introducing generics into Mack's Discount that would give you any understanding of what his assist had been?

A. No, ma'am.

Q. Now, the Court Reporter has marked as Countryman Exhibit 10 a document bearing B&W production numbers 187452 through 187454. Have you seen this document before?

A. Yes.

Q. Did you write this document?

A. Yes.

Q. Did you prepare this document in the regular course of your business?

A. Yes.

Q. At the time that you prepared this document, did you believe it to be accurate?

824 18743

Mr. Countryman/By Ms. Bagley

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A. Yes.

Q. I'd like to direct your attention to the first paragraph of this document in which you say, "Because of unethical competitive pressures generated by Gary Tobacco sales personnel, some of these Thomas & Howard facilities have reinstated the Gary generic product line on a dual basis with B&W." What were those unethical competitive pressures that you referred to in this document?

A. I'm going to take a minute to think about this one, because I'm going to try to remember everything I can. Some of the practices that I'm familiar with were making retailers aware of the lawsuit that had been filed by Liggett and indicating to those retailers that if they continued to stock Brown & Williamson generics, they ran the risk of being implicated in the lawsuit. The fact that Brown & Williamson's products were inferior in quality to those manufactured by Liggett. That's, frankly, all I can remember at the moment.

Q. And it was those practices that caused the Thomas & Howard facilities to reinstate Gary generic products?

A. Those were part --

(WHEREUPON, there was held a discussion off the record which was not reported.)

Q. Can we take a quick break here?

MR. JAMES: Sure.

B24 18744

CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

FORM 31 125 REPRODUCED BY THE MINN. SEC. CO. REC 6/26/61

Mr. Countryman/by Ms. Bagley

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(WHEREUPON, a five minute recess was
taken at this time.)

Q. The Court Reporter has marked as Countryman Exhibit 11
a document bearing B&W production number 13322. Have
you seen this document before?

A. Yes.

Q. Did you write it?

A. Yes.

Q. Did you prepare this document in the regular course of
your business?

A. Yes.

Q. At the time you prepared this document, did you believe
it to be accurate?

A. Yes.

Q. Directing your attention to the second paragraph of
this letter, you mention Mr. Quinn's "concerns about
his current generic business." Do you remember what
you were referring to here?

A. No, I really don't in terms of the concerns.

Q. In the next sentence, you mention -- you state that you
will "attempt to obtain an extension on our program
on your behalf." What were you referring to here?

A. I believe that reference was to the rapid signing bonus
that was initiated during our initial launch of the
generic cigarettes. And I believe that they had to have

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FORM NO. 325 RE-PRINTED FROM A M-FS CO. H00 8/8 6-11

Mr. Countryman/by Ms. Bagley

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it signed by a certain period of time to qualify for that bonus.

Q. The Court Reporter has marked as Countryman Exhibit 12 a document bearing Brown & Williamson production numbers 91100 through 91104. Take a look at that. Have you seen this document before?

A. Yes.

Q. Did you write this document?

A. Yes.

Q. Is this one of your monthly senior manager's field reports?

A. Yes.

Q. Did you prepare this report in the regular course of your business?

A. Yes.

Q. When you prepared this report, did you believe it to be accurate?

A. Yes.

(WHEREUPON, there was held a discussion off the record which was not reported.)

Q. I've asked the Court Reporter to mark as Countryman Exhibit 13, a document bearing Brown & Williamson production number 13321 and I've asked the Court Reporter to mark as Countryman Exhibit 14 a document bearing Brown & Williamson production number 13314.

824 18746

Mr. Countryman, by Ms. Bagley

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Mr. Countryman, have you seen these documents before?

A. Yes.

Q. Directing your attention to Exhibit 13, have you seen this document before?

A. Yes.

Q. Did you write this document?

A. Yes.

Q. Did you prepare this document in the normal course of your business?

A. Yes.

Q. Did you believe it to be accurate at the time you prepared it?

A. Yes.

Q. Directing your attention to Exhibit 14, have you seen this document before?

A. Yes.

Q. Did you prepare this document?

A. Yes.

Q. Did you prepare this document in the regular course of your business?

A. Yes.

Q. Did you believe it to be accurate at the time you prepared it?

A. Yes.

Q. I've asked the Court Reporter to mark as Countryman

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Mr. Countryman/by Ms. Bagley

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Exhibit 15 a document bearing Brown & Williamson production number 10390, and I ask you to look at that. Directing your attention back for one moment to Exhibit 14, can you tell me what the response of Sharon Smith was to this -- or the response of anybody in Louisville was to your request for an extension for McLean Wholesale?

A. I guess it was approved.

Q. Which key account manager is responsible for McLean Wholesale?

A. Janson Booth.

Q. Okay, directing your attention back to Exhibit Number 15, have you seen this document before?

A. Yes.

Q. Did you prepare the part of this document from the heading "Note To Danny Dant" on down?

A. Yes.

Q. Did you prepare that part of the document in the normal course of your business?

A. Yes.

Q. Did you believe it to be accurate at the time?

A. Yes.

Q. I've asked the Court Reporter to mark as Plaintiff's Exhibit 16 a document bearing B&W production number 126128 through 126132.

824 18748

CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

FORM OR 325 THE PUGH MC DANIEL & MCG LO 800 626 6333

Mr. Countryman/by Ms. Bagley

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MR. JAMES: I think you mean Countryman

Exhibit 16.

Q. Who did I say?

MR. JAMES: Plaintiff's.

Q. Oh, I know, I was reading off the sticker, that's why.

Thank you. Have you seen this document before?

A. Yes.

Q. Did you receive a copy of this document on or about August 8, 1984?

A. Yes.

Q. Are any of the attached members of the Southern Buying Co-op in your department?

A. Yes.

Q. And which are those?

A. 9A, Carter Colton Cigar Company.

Q. That's on page 126130 of this document -- yes?

A. Oh, you're asking me?

Q. Yes, I'm sorry.

A. Yes.

Q. That's the only account in your department that's a member of the Southern Buying Co-op?

A. To my knowledge, yes.

Q. To your knowledge, is that account still a member of the Southern Buying Co-op?

A. They were through August 31st, 1985.

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Mr. Countryman, by Ms. Bagley

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Q. At any time subsequent to this memo, did any other customers in your department join the Southern Buying Co-op?

A. Not to my knowledge.

Q. Mr. Countryman, did you ever suggest to an account what price spread they should keep between the prices of branded cigarettes and generic cigarettes?

A. No, ma'am.

Q. Do you know whether anyone in your department made that sort of suggestion to an account?

A. I don't know if anyone ever made that suggestion, no.

Q. I'd like to ask the Court Reporter to mark as Countryman Exhibit 17 a document bearing Brown & Williamson production number 63783 through 63787. (DOCUMENT SO MARKED.) Have you seen this document before?

A. Yes.

Q. Did you receive this document in the normal course of your business?

A. Yes.

Q. Are there Majik Market stores in the Charlotte department?

A. Yes.

MR. JAMES: Just make clear that Majik is spelled with a J.

(WHEREUPON, there was held a discussion off the record, which was not reported.)

824 18750

CONFIDENTIAL MINNESOTA TOBACCO LITIGATION

FORM NO. 125 - REVISION 10-1-64 - M.G. - O - 800 626 6114

Mr. Countryman/by Ms. Bagley

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Q. Directing your attention to the bottom of page two of this document under the heading "Important." This document states that "Our Generics should be priced 20¢ a pack less than branded cigarettes. Generic cartons should be priced \$2.00 less than branded cigarettes." Do you know whether or not any of your division managers or sales reps or key account managers suggested to Majik Market accounts that their generics should be priced according to this document?

A. No, I do not.

Q. I'd like to show you a document that's been previously marked as Schoenheiter Exhibit 9, and ask you to look at that.

(WHEREUPON, there was held a discussion off the record which was not reported.)

Q. Have you seen this document before?

A. Yes.

Q. Did you prepare this document?

A. Yes.

Q. Is this one of your senior field manager's monthly reports?

A. Yes.

Q. Did you prepare this document in the regular course of your business?

A. Yes.

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Mr. Countryman/by Ms. Bagley

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Q. Did you believe it was accurate at the time you prepared it?

A. Yes.

Q. Have you ever made a presentation to an account in your department at which an employee of GPC was also present?

MR. JAMES: Again regarding just generic cigarettes?

Q. Yes.

MR. JAMES: And again, subject to our August 31st, '85, cut-off.

Q. Right, although I think he can answer this question yes or no.

MR. JAMES: Yes.

A. Yes.

Q. And when was that?

A. I don't remember.

Q. Do you remember which account the presentation was made to?

A. Not really.

Q. Do you remember more than one occasion in which you were accompanied by a GPC employee?

A. I remember more than one occasion that I was in the presence of a GPC employee. And I think to answer the question and clarify it, I'm not sure that I personally was involved in a presentation with them, but I was in

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their presence.

Q. At a --

A. At times that either my key account manager made a presentation or someone else made a presentation.

Q. Do you recall approximately how many times those occurred?

A. No, I do not.

Q. I'd like to show you a document that's been previously marked as Pant Exhibit 97, and ask you to look at that.

(WHEREUPON, there was held a discussion off the record which was not reported.)

Q. Have you seen this document before?

A. I believe I have.

Q. Do you remember when you saw it?

A. No.

Q. Do you remember the circumstances under which you saw it?

A. These are often either fed back to us through Mr. Schoenheiter, or from Jim Hite who is involved in compiling the information.

Q. Directing your attention to the top of page 96310, the comment in the first paragraph on that page. Was this comment made by you in one of your senior field manager's reports?

A. Yes, it was.

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Q. Would any comment in this report, in this executive summary, that was attributed to Charlotte be a comment of yours?

A. Not necessarily.

Q. Whose comments other than yours could they be?

A. I don't know.

Q. Who else in Charlotte files senior field manager's reports -- who else in the Charlotte department?

A. All of the key accounts managers.

Q. I'd just like to reiterate with you the fact that we don't have the manager's report that has this comment in it, to my knowledge, so we can add that to the list.

MR. JAMES: All right.

Q. Mr. Countryman, what is your understanding of the reason that the oval product style is most recognizable by wholesalers and consumers?

A. Could you ask the question just a little bit differently?

Q. Why did you state in this comment that the oval product style of generics was most recognizable?

A. Because I believe it had, at this point in time, the widest distribution.

Q. I've asked the Court Reporter to mark as Countryman Exhibit 18 a document bearing Brown & Williamson production number 81189 through 81192, and I ask you to look at that. Have you seen this document before?

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FORM OR 125, REPTER: DAVE A. MCG. CO. 800 826 8311

Mr. Countryman by Ms. Bagley

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A. Yes.

Q. Did you prepare this document?

A. Yes.

Q. Is this one of your monthly senior field manager's reports?

A. Yes.

Q. Did you prepare this document in the regular course of your business?

A. Yes.

Q. At the time you prepared this document, did you believe it to be accurate?

A. Yes.

Q. Directing your attention to the last paragraph on the first page. The third sentence reads "During the past couple weeks there has been a sharp increase in the number of complaints from retailers to wholesalers regarding the shipment of B&W product to retail." What are you referring to in this sentence?

MR. JAMES: Could you be more specific about -- what particularly do you want him to --

Q. What were the complaints about the shipment of B&W product to retail?

A. I don't remember.

Q. I've asked the Court Reporter to mark as Countryman

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Mr. Countryman/by Ms. Bagley

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Exhibit 19 a document bearing the production number 97622.

For the record, this is the second page, I believe, of a senior field manager's report and as far as I can determine the first page is not produced. (DOCUMENT SO MARKED.) Have you seen this document before?

A. Yes.

Q. Did you prepare this document?

A. Yes.

Q. Is this document the second page of one of your monthly field manager's reports?

A. Yes.

Q. Did you prepare this document in the regular course of your business?

A. Yes.

Q. Did you believe this document to be accurate at the time you prepared it?

A. Yes.

Q. I'll ask the Court Reporter to mark as Countryman Exhibit 20 a document bearing B&W production number 91197 through 91198, and ask you to look at that. (DOCUMENT SO MARKED.) Have you seen this document before?

A. Yes.

Q. Did you prepare this document?

A. Yes.

Q. Is this one of your monthly senior field manager's

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reports?

A. Yes.

Q. Did you prepare this document in the regular course of your business?

A. Yes.

Q. Did you believe it to be accurate at the time you prepared it?

A. Yes.

(WHEREUPON, there was held a discussion off the record which was not reported.)

Q. To your knowledge, has any account in your department been paid at a rebate level when its actual purchases of generic cigarettes did not qualify it for that rebate level?

MR. JAMES: Object to the form.

A. Could you ask the question just a little bit differently?

Q. I'll try. To your knowledge, has any account in your department been paid at a rebate level higher than its volume for a certain quarter would indicate?

MR. JAMES: I'll object again to the form. He can answer it.

A. Not to my knowledge.

Q. To your knowledge, has there ever been an exception made to that rule when an account is very close in purchases to the next rebate level?

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A. Not to my knowledge.

Q. I have no more questions.

CROSS EXAMINATION BY MR. JAMES

Q. I just have one or two things I want to clarify. You asked him about Schoenheiter Exhibit 8 most previously.

MS. BAGLEY: Yeah, I do know which one it is.

Q. I'd like to direct your attention to your testimony regarding the requirements for participation in the direct account incentive plan. Could you describe what you understood to be the requirements for participation in the direct account incentive plan?

A. Accounts are broken down into two segments. Either they're grocery wholesale or distributor customer's class 3 and 4. They have one direct account incentive rebate program or payment program. And then chain customers, chain food and chain drug, class 1 and 2, have a different rebate payment program. Those customers that are in class 3 and 4 have certain participation requirements. The primary requirement being that they are required to stock all products stocked in that market area made by Brown & Williamson. To include all national branded cigarettes as well as all generic cigarettes that are marketed in that area. Class 1 and 2 chain

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customers are required to carry specific national brands, and I believe the total of those brands is 12. And then they are also required to carry optional brands, 4 of which must be generics. If they do so, then they qualify for the program. A second facet of the program for each of those customers, or customer types, is that they have to participate in a minimum of two retail distribution and/or promotional drives on selected products that are determined either by the company or by the local field manager during the course of a year.

A. Those requirements were communicated to the entire sales force via a direct account incentives brochure.

A. Could you ask that question differently?

MS. BAGLEY: Object to the form.

Q. Do you know whether or not the formula described here was or was not created for this program? \$

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Mr. Countryman/by Mr. James

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MS. BAGLEY: I still object to the form.

A. Does that mean I answer the question?

MS. BAGLEY: As far as I'm concerned
it does.

A. To my knowledge, the format for this program is unique
to this program.

Q. I have no further questions.

MS. BAGLEY: I have no questions.

(WHEREUPON, there was held a discussion
off the record which was not reported.)

Q. I'd just like the Reporter to mark the Deposition
Confidential, pursuant to the Confidentiality Agreement
that exists in this case. And mark it on the first page
and however many other pages you normally do such
things. As to the request for discovery, again, I ask
that you send us a follow-up letter on those. As I
sit here, I don't know whether some of the things you've
requested have already been produced. And we'll, of
course, take your request under advisement.

(WHEREUPON, the taking of the foregoing
Deposition was concluded at 7:35 p.m.)

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Mr. Countryman

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I have read the foregoing pages, 1 through 148, inclusive, and find that they contain a correct transcription of the answers made by me to the questions therein recorded, with the exception of _____ corrections as listed on a separate sheet of paper and incorporated into this record.

GERALD COUNTRYMAN

Sworn and subscribed before

me this the _____ day of

_____, 19 ____.

Notary Public

My Commission Expires: _____

(Deposition tapes are retained for 30 days from date of certificate or until the transcript is signed by the witness in cases where the signature is not waived.)

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Mr. Countryman

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1 STATE OF NORTH CAROLINA

2 COUNTY OF MECKLENBURG

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4
5 C E R T I F I C A T E

6 I, BARBARA BEATTY MILLER, Notary Public, do hereby
7 certify that, GERALD COUNTRYMAN
8 was duly sworn by me prior to the taking of the foregoing
9 Deposition; and that said Deposition was taken and
10 transcribed under my supervision and direction; and the
11 foregoing One Hundred Forty-Eight pages
12 constitute a true and accurate transcript of the testimony
13 of the said witness.

14 I do further certify that the parties were present
15 as stated in the caption.

16 I do further certify that I am not of counsel for
17 or in the employment of either of the parties to this action,
18 nor am I interested in the results of said action.

19 IN WITNESS WHEREOF, I have hereunto subscribed my
20 name this the day of 19 .

21
22
23
24 BARBARA BEATTY MILLER
Notary Public

25 My Commission Expires June 10, 1990.

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